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A TREATISE ON THE LAW OF INHERITANCE TAXATION

WITH PRACTICE AND FORMS

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INTRODUCTION

Every estate of fifty thousand dollars or more in value is taxed by the Federal statute. Nearly every such estate has investments in corporate stock. The transfer of such stock, at the death of its owner, is usually taxed by the state of incorporation as well as by the state of the owner's domicile. Most estates of any size are therefore subject to inheritance taxation in several jurisdictions.

In 1917 seventeen states and the Federal government amended their inheritance tax laws or adopted new statutes. In the last four years thirty-six states have done so out of the forty-four imposing such taxes. Transfer tax law, therefore, is nation-wide; and no text book that is merely an annotation of a single state statute, however elaborate, can give the necessary information.

Hitherto, with a few exceptions, most of the states have enforced inheritance taxation "Dogberry fashion;" but under the recent amendments the collection is now entrusted to special departments with ample legal assistance. The rates have also been heavily increased.

The plan of this book is to depart from mere statutory annotation and treat the subject of inheritance taxation as a distinct branch of jurisprudence, coordinating the decisions and statutes into a body of law gradually developed by the legislation and litigation of the last twenty years.

New York necessarily leads the way, as half the revenue and more than half the litigation has been derived from her statute; and it has been largely copied by other

states; but, as her citizens also pay a large share of the inheritance taxes collected in those states from the estates of nonresidents, New York attorneys cannot well confine their attention exclusively to the New York statute and the decisions under it.

As the state and Federal governments are all seeking to derive large revenues from the estates of decedents, involving in most cases double and triple taxation, attorneys are constantly besought by investors for advice as to the best means of minimizing such taxation. This book undertakes to point no way of evading the law. Its authors have been and are charged with the duty of enforcing it and could not properly advise methods of "tax dodging;" but a thorough understanding of the principles of inheritance taxation and the provisions of the several state statutes must afford legitimate information that will assist the lawyer and the layman justly and properly to adjust estate investments to meet conditions arising from laws, now in force.

To illustrate: No statute taxing inheritances, save possibly that of Rhode Island, taxes life insurance, when payable direct to the beneficiary, and not to the estate of the insured. No subsequent statute can constitutionally tax such insurance when once taken.

Matter of Pell, 171 N. Y. 48; 63 N. E. 789.

Matter of McKelway, 121 N. Y. 15; 116 N. E. 348.

In the last few months the courts have construed questions arising under gifts, joint tenancies, survivorship and partnership agreements, residence, domicile, and exemptions, clarifying many points in the administration of the law hitherto obscure. These will all be found in this volume.

Because, by mercy of "vox populi" and "pro bono publico," most of the state legislatures meet bienially, in the odd numbered years, the statutes, as now constituted, will remain unamended until 1919. For two years, at least, the information as to these laws afforded by this book will be up to date.

The plan of the book is to discuss inheritance tax law under six topics, as follows:

First: The nature of the tax and the constitutional principles that limit and control its imposition.

Second: The different transfers taxable; viz., by will, interstate law, gift in contemplation of death, etc.

Third: The parties and their interests, residence of the decedent, relationship of beneficiaries, exemptions, life estates, remainders, mortuary tables and calculations of the value of life interests.

Fourth: The property transferred, and the problems arising out of its situs and valuation.

Fifth: Procedure, necessarily confined to the New York practice, though it is largely followed in other states and authorities from those states are cited where applicable.

Sixth: General resumé of the statutes and an extended discussion of the provisions of the Federal and New York acts.

The Appendix gives the New York Decedent Estate Law, New York Forms and the inheritance tax statutes of all the states with tables showing the rates of tax and exemptions in each state.

The book also contains the tables of mortality used as the basis of inheritance tax calculations in all the states, lists of the principal stock corporations showing the state of incorporation and whether there taxable, names and addresses of the officers of the several states and the Federal internal revenue to whom attorneys should write

for blank forms and information; and the usual table of cases giving extensive citations from every jurisdiction imposing inheritance taxes.

It is hoped that these features are sufficiently novel and necessary to justify the publication and make it acceptable to the bar.

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INHERITANCE TAXATION

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PART I—THE TAX

Inheritance taxation has come to be a distinct department of jurisprudence. Although it is necessarily purely statutory the statutes are based upon fundamental doctrines which are peculiar to this subject.

In order to understand it scientifically and tread the maze of statutes and decisions with a clear comprehension of the principles from which they spring and the substantial foundations of justice upon which the courts endeavor to rest them there are two cardinal doctrines that should be thoroughly grasped. There is hardly a litigation in all the thousands of controversies that have arisen over inheritance taxation that does not involve one or both of them.

They are:

(a) That the tax is not a property tax; but an excise or impost upon the right to transmit property at death; or upon the right to succeed to it from the dead.

(b) That the tax accrues because of and at the death of the owner; that the rights and liabilities of the state and the beneficiaries date from that event; and that the value of the property transmitted or received, which measures the value of the inheritance, is taken at that date.

A.—NOT A TAX ON PROPERTY BUT ON THE RIGHT TO RECEIVE AND INHERIT IT.

If an inheritance tax is construed as a tax upon the property of a decedent, such a tax necessarily violates the universal constitutional requirements that taxation

shall be equal in its burdens and uniform in its application.

No just property tax could be levied that was unequal and not uniform.

No just inheritance tax could be imposed that did not make exemptions to the widow and the orphan or that taxed their patrimony equally with the succession of distant relatives and strangers.

An annual tax levy that asseessed Farmer Jones, on one side of the street, at 2%, and Farmer Robinson, on the other side of the street, at 5% of the value of their respective farms would obviously be unjust, tyrannical, oppressive and intolerable.

But if Farmer Jones leaves his farm to his widow and his son and Farmer Robinson devises his acres to cousins in Norway, a tax on the transfer by Jones at 2% and on that by Robinson at 5% is recognized as just and equitable.

Moreover, it is generally thought that a fortunate youth who inherits a sum sufficient to class him with the "idle rich" should pay more, proportionately, for the privilege than the son of the poor man who merely gets a fair start in life as the result of his father's industry and solicitude and his mother's life-long sacrifices and economies.

While these considerations are applicable to the taxation of inheritances they are fundamentally obnoxious to the principles of ordinary taxation—hence the vital importance of the initial proposition that such taxes are not levied upon property, but upon the right to transmit and inherit it.

1. Review of Authorities.

The leading cases in all the states deal with the problem and arrive at a nearly unanimous view; but to apply it as we must throughout this treatise a review of these authorities is necessary.

Arkansas.—"Being a statute taxing privileges and not property it does not conflict with the uniformity provisions. It but divides the value of estates passing to certain classes of persons into certain amounts, a reasonable classification for the purpose of laying or levying a progressive inheritance tax."

State v. Handline, 100 Ark. 175; 139 S. W. 1112.

California.—"The tax thus imposed is in the nature of an excise tax or a tax upon the right of succession. The right of inheritance including the designation of heirs and the proportions which the several heirs shall receive as well as the right of testamentary disposition are entirely matters of statutory enactment and within the control of the legislature."

Wilmerding's Estate, 117 Cal. 281; 49 Pac. 181.

Colorado.—"As the tax is not on property but on the right of succession the state may tax privileges, discriminate between relatives and grant exemptions; and it is not precluded from this power by the provision of the respective state constitutions regarding uniformity of taxation."

Brown v. Elder, 32 Colo. 527; 77 Pac. 853.

Connecticut.—"Our succession tax is computed with reference to the whole beneficial value of the succession which passes by force of our law."

Hopkins' Appeal, 77 Conn. 644, 653; 60 A. 657.

Illinois.—The broad principle presented is that the legislature may create new classes of property with reference to estates under which they may regulate the right to inherit or devise and take under devise and such right existing such classes may be created and as created may be uniform and the assessment by valuation when declared to operate equally on the right of succession to such classes is not a violation of the constitution.

Kochersperger v. Drake, 167 Ill. 122; 47 N. E. 321.

Iowa.—"It is not a tax upon property as that phrase is ordinarily understood; but a tax upon the succession, upon the privilege of succeeding to the estate of the decedent."

McGhee v. State, 105 Ia. 9; 74 N. W. 695.

Kentucky.—"As the privilege or right to take property by inheritance or devise is not a natural or inherent right of persons but is a creation of the law, it is subject to regulation by statute and the imposition of the tax as incident to the right is authorized under our governmental system when not expressly forbidden by the constitution."

Booth v. Commonwealth, 130 Ky. 88; 113 S. W. 61.

Louisiana.—"It is not a tax on property but a bonus or premium exacted by the sovereign on the transmission of an estate, the amount being measured by the value of the property."

Succession of Kohn, 115 La. 71; 38 So. 898.

Maine.—"The constitution guarantees to the citizen the right of acquiring, possessing and protecting property, but the guarantee ceases to operate at the death of the possessor. There is no provision of our constitution or that of the United States which secures the right to any one, to contract or dispose of his property after his death nor the right to any one, whether kindred of or not, to take it by inheritance. Descent is a creature of statute and not a natural right."

State v. Hamlin, 86 Me. 495; 30 A. 76.

Maryland.—"The tax is on the transmission of property."

State v. Dalrymple, 70 Md. 294; 17 A. 82.

Massachusetts.—"To make a distinction between collateral kindred or strangers in blood and kindred in the direct line in reference to the assessment of such a tax, either by exempting the kindred in the direct line or by

imposing on collaterals and strangers a higher rate of taxation, has the sanction of nearly all states which have levied taxes of this kind. It has a sanction in reason, for the moral claim of collaterals and strangers is less than that of kindred in the direct line, and the privilege is therefore greater. The tax imposed by this statute is uniformly imposed upon all estates and all persons within the description contained in it, and the tax is not plainly and grossly oppressive in amount.

“It is argued that the excise, if upon the privilege of taking property by will or descent, should be the same whenever the privilege enjoyed is the same in kind and extent, whatever may be the value of the estate, and that the exemptions should relate to the value of the property received by those who have the privilege of receiving it, and not the value of the estate. But the right or privilege taxed can perhaps be regarded either as the right or privilege of the owner of property to transmit it on his death, by will or descent, to certain persons, or as the right or privilege of these persons to receive the property.”

Minot v. Winthrop, 162 Mass. 113; 38 N. E. 512.

Michigan.—“Respondent’s contention is that it is a tax upon the transfer of property and is based upon the proposition that inheritance is not a natural right but a creature of the statute and the bounty of the public. The conclusion that this statute imposes an *ad valorem* tax upon property can only be avoided by saying that it is not a tax upon the property and that, therefore, the *ad valorem* feature which so far as the assessment upon the value is concerned, is certainly present, is wanting because it is not an assessment upon the value of the property taxed. In short the claim of the respondent is that this is a tax upon a privilege, viz., the privilege of succession, and that there is a legal distinction between a tax upon

the property itself assessed upon the basis of its value and a tax upon this privilege assessed upon the basis of its value which is measured by that which is the subject of the privilege, viz., the property. Unless this is a distinction without a substantial difference the respondent is right.”

After citing many authorities the court concludes:

“Many other authorities might be cited in support of the proposition that it is a tax upon the privilege rather than upon the property. We are of the opinion that the overwhelming weight of authority supports it.”

Union Trust Co. v. Probate Judge, 125 Mich. 487; 84 N. W. 1101.

Minnesota.—“It is variously termed an ‘inheritance tax,’ ‘succession tax,’ ‘legacy tax’ and ‘probate duties,’ but, whatever it may be termed it is not a tax upon property; but upon the right of succession thereto.”

State v. Bazille, 97 Minn. 11, 19; 106 N. W. 93.

Missouri.—*Contra*: “When the legislature makes the amount of money received by each the test of classification it runs counter to another principle that is well nigh universally accepted that a uniform rate of taxation upon every man’s *property* receives an equality of burden.”

State v. Switzler, 143 Mo. 287; 45 S. W. 245.

Montana.—“The burden of the tax is not imposed upon the property itself but upon the privilege of acquiring property by inheritance. In nearly all the inheritance tax laws the statutes provide for an appraisal of the property to be inherited; but the object of such valuation is not to tax the property itself. It is to arrive at a measure of the price by which the privilege of inheritance can be valued.”

Gelsthorpe v. Furnell, 20 Mont. 299; 51 Pac. 267.

Nebraska.—“It is a tax upon the right of succession to property, that is upon the right to receive the property

from the estate of the decedent and not upon the property itself."

State v. Vinsonhaler, 94 Neb. 675; 144 N. W. 248.

New Hampshire.—"Those who acquire title by the operation of our laws relating to the estates of deceased persons must take the benefits charged with the burden imposed by those laws."

Mann v. Carter, 74 N. H. 345, 352; 68 A. 130.

New Jersey.—"The tax imposed is on the right of succession under a will or by devolution in case of intestacy."

Hartmann's Appeal, 70 N. J. Eq. 664; 62 A. 560.

New York.—"It is a tax not on property but on succession, that is to say a tax on the legatee for the privilege of succeeding to property."

Matter of Gihon, 169 N. Y. 443; 62 N. E. 561.

"It is in the nature of an excise tax on the right and method of transfer."

Matter of White, 208 N. Y. 64; 101 N. E. 793.

"A tax is a property tax when imposed by reason of the ownership; a transfer tax when imposed on the method of acquisition."

Matter of Vanderbilt, 172 N. Y. 69; 64 N. E. 782.

North Carolina.—"A succession tax is on the right of succession to property and not on the property itself. The right to take property by devise or descent is not one of the natural rights of man but is a creature of law."

Morris' Estate, 138 N. C. 259; 50 S. E. 682.

Ohio.—"As a majority of the court are of the opinion that it is not a tax upon property but upon the right to receive property the statute must as to this point be sustained."

State v. Ferris, 53 Ohio St. 314, 340; 41 N. E. 579.

Pennsylvania.—"Conceding for argument's sake merely that the legislature has power under our constitution to so change the law of descent and succession as to give the commonwealth a certain portion of every decedent's estate, or otherwise to regulate the transmission or devolution of such estates, it does not by any means follow that the direct inheritance tax law under consideration is such an act."

Cope's Estate, 191 Pa. St. 1, 23; 43 A. 79.

South Dakota.—"Treating it as the taxation of the privilege or right or even more correctly the taxation of the transmission of property, it is readily seen that it becomes absolutely immaterial whether we consider the transmission of or succeeding to property an inherent right or a statutory privilege. A corporation acquires its right to do business by the charter received. A natural person has an inherent right to do such business. If the state determines to tax the exercise of such right, it does so as to both the persons and the corporation, utterly disregarding the nature or source of the right.

"This charge imposed upon transmission of property is clearly a tax and has nothing to do with and is not at all dependent for its validity upon the right to regulate the succession of property."

McKenna's Estate, 25 S. D. 369, 377; 126 N. W. 611.

Tennessee.—"It is a retention by the state of a part of a deceased person's property which the state may take to meet its necessities, and which in certain cases it may take in toto as in case of escheated property."

State v. Alston, 94 Tenn. 674; 30 S. W. 750.

Utah.—"When, as here, the tax is not one which is controlled by our constitution it is for the legislature to say to what extent and upon what property it shall become operative."

Matter of Bullen, 151 Pac. 533.

Vermont.—"All agree that this is a tax upon the right to succeed to estates left vacant by death and is imposed by the sovereignty regulating that right in virtue of its authority to enforce contribution from those who become invested with property by grace of its power."

In re Joslyn, 76 Vt. 88; 56 A. 281.

Virginia.—"The objection that the tax is not levied upon the heir or legatee but is to be paid out of the estate of the decedent and, therefore, that it cannot be considered a tax upon the privilege of succeeding to the property is, I think, more specious than real. Whether the tax is paid by the personal representative before he turns over the estate to the party entitled or by the latter after he receives it, the effect is the same. It is in either case a premium paid for the right enjoyed and the value of the estate is exactly diminished by the amount of the premium."

Eyre v. Jacob, 14 Gratt. 422, 429.

Washington.—"The act imposes a tax on the right of succession."

White v. Tax Commissioners, 42 Wash. 360; 84 Pac. 831.

Wisconsin.—"It is not a tax upon property or upon property rights in any sense, but purely an excise levied upon the transfer or transaction and merely measured in amount by the amount of the property transferred."

Beals v. State, 139 Wis. 544; 121 N. W. 347.

United States.—"Thus the tax is not upon the property in the ordinary sense of the word but upon the right to dispose of it, and it is not until it has yielded its contribution to the state that it becomes the property of the legatee."

United States v. Perkins, 163 U. S. 625; 16 S. Ct. Rep. 1073.

To the same effect are:

Matter of Sherwell, 125 N. Y. 376; 26 N. E. 464.
Magoun v. Ill. Trust and Sav. Bk., 170 U. S. 283; 18 S. Ct. Rep. 594.
Plummer v. Coler, 178 U. S. 115; 20 S. Ct. Rep. 829.
Re Magnes, 32 Colo. 52; 77 Pac. 853.
Re Macky, 45 Colo. 316; 101 Pac. 334.
Wieting v. Morrow, 151 Ia. 590; 132 N. W. 193.
Leavell v. Arnold, 131 Ky. 426; 115 S. W. 232.
Schoolfield v. Lynchburg, 78 Va. 366.
Pullen v. Commissioners, 66 N. C. 361.
Humphreys v. State, 70 Ohio St. 67; 70 N. E. 957.
Thompson v. Kidder, 74 N. H. 89; 65 A. 392.
Tyson v. State, 28 Md. 577.
Drew v. Tift, 79 Minn. 175; 81 N. W. 839.

But if the act is construed as a property tax it is void:

Cope's Estate, 191 Pa. St. 1; 43 A. 79.
Chambe v. Durfee, 100 Mich. 112; 58 N. W. 661.
Re Fox, 154 Mich. 5; 117 N. W. 558.

The legislature has inherent power to impose inheritance taxes:

Snyder v. Bettman, 190 U. S. 249; 23 S. Ct. Rep. 803.
Curry v. Spencer, 61 N. H. 624.
State v. Lancaster, 4 Neb. 537.
Re Nettleton, 76 Conn. 235; 56 A. 565.
Re Joslyn, 76 Vt. 88; 56 A. 281.
Re Inheritance Tax, 23 Colo. 492; 48 Pac. 535.
State v. Clark, 30 Wash. 439; 71 Pac. 20.

2. The Privilege Taxed.

It is obvious that the authorities are unanimous in declaring that an inheritance tax is not and cannot be a tax on property without violating the constitutional principles of uniformity and equality. They also agree that such a tax is an excise or impost upon the right or privilege of transmitting property from the dead to the living.

It is equally apparent that there is some confusion or inaccuracy as to whether the inheritance tax imposed by

a particular statute is on the right to transmit, the right to receive, or both. It is described as a succession tax on the right to receive by the courts of Colorado, Connecticut, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, North Carolina, Ohio, Vermont, Virginia and Washington.

It is referred to as a bonus, premium or excise on the right to control the disposition of property after death by the courts of Louisiana, Tennessee and Wisconsin; but the statutes under construction were distinctly succession taxes on the share of each beneficiary.

It is described as a tax on both the right to devise and the right to inherit by the leading cases in California, Illinois, Maine, Massachusetts, New York, South Dakota, and the United States Supreme Court.

In truth the rights can scarcely be separable, for, if there is a transfer, and the tax is on that transfer, there must be a transferrer and a transferee. No court adopting one theory denies that the other is equally tenable. Clearly if the legislature has power to tax the privilege of transmitting it must also have the power to tax the privilege of receiving and vice versa.

When it comes to the imposition of the tax the wide divergence between the two theories becomes apparent. If the tax is on the right to transfer it is on the entire estate without reference to the beneficiaries. This is practicable as long as it is a "flat rate," such as is imposed on the whole estate by the statutes of Rhode Island and was formerly imposed in New York

The difficulty arises when graded rates are imposed on the right to transmit, viz., upon the entire estate, without reference to the beneficiaries. If the estate is \$1,000,000 and there are legacies of \$100,000 to three heirs of different degrees of relationship and a residuary of \$700,000, and the tax is on the whole estate \$50,000, at one rate, \$100,000

at another rate, and so on up to the million, and no provision is made for adjustment among the beneficiaries, we have the "confusion worse confounded" produced by the federal tax of 1916.

The right to transmit, being a single right, should be uniformly taxed, without rates graded in proportion to the amount of the transfer. Graded rates have thus far only been sustained when the tax is on the succession and is apportioned among the beneficiaries. Whether they are constitutional when imposed on the right to transfer without reference to the transferee remains to be determined.

State v. Ferris, 53 Ohio St. 314; 41 N. E. 579.

Knowlton v. Moore, 178 U. S. 41, 76; 20 S. Ct. Rep. 747.

3. Statutes Held Invalid.

In 1897 Pennsylvania enacted a direct inheritance tax which was declared unconstitutional as a tax on property, though it was substantially copied from statutes sustained in other states on the theory of a tax on privilege; but the court is careful not to say that a statute might not be sustained on the privilege theory if so worded as to be clearly an excise.

Cope's Estate, 191 Pa. St. 1; 43 A. 79.

In view of the overwhelming authority upholding such statutes it is not improbable that the Pennsylvania courts would now uphold a carefully drawn direct inheritance tax. The original collateral inheritance tax was enacted in that state in 1826, prior to the present constitution. Inheritance tax statutes have also been held invalid for a lack of uniformity and equality in Missouri, Minnesota, New Hampshire, Ohio, and Wisconsin.

Minnesota, New Hampshire and Wisconsin have amended their constitutions and the subsequent inheritance tax laws are now upheld in those states. Missouri has

just enacted another direct inheritance tax under the same constitution while Ohio contents herself with a collateral inheritance tax.

State v. Switzler, 143 Mo. 287; 45 S. W. 245.

State v. Ferris, 53 Ohio St. 314; 41 N. E. 579.

4. Practical Applications of the Rule.

a. NOT A DIRECT TAX TO BE APPORTIONED AMONG THE STATES.

The results of the doctrine that inheritance taxes are not imposed upon property but upon privilege are far reaching, as a few of its practical applications will illustrate.

The Federal inheritance tax of 1898 was construed as an excise or impost and not a direct tax and was not required to be apportioned among the states in proportion to their population.

Knowlton v. Moore, 178 U. S. 41; 20 S. Ct. Rep. 747.

The court said: "It is apparent that if imposts, duties and excises are controlled by the rule of intrinsic uniformity the methods usually employed at the time of the adopting of the constitution in all countries in the levy of such taxes would have to be abandoned." And again — at page 109, "Taxes imposed with reference to the ability of the person upon whom the burden is placed to bear the same have been levied from the foundation of the government."

b. PROPERTY OTHERWISE EXEMPT MUST BE INCLUDED AND VALUED.

This is so as to United States government bonds.

Matter of Sherman, 153 N. Y. 1; 46 N. E. 1032.

People ex rel. U. S. A. P. P. Co. v. Knight, 174 N. Y. 475; 67 N. E. 65.

Plummer v. Coler, 178 U. S. 115; 20 S. Ct. Rep. 829.

Wallace v. Myers, 38 Fed. 184.

Also as to a bequest to the United States government.

Matter of Cullom, 76 Hun, 610; 27 Supp. 1105; affd., 145 N. Y. 593; 40 N. E. 163.

Matter of Merriam, 141 N. Y. 479; 36 N. E. 505; affd., 163 U. S. 625; 16 S. Ct. Rep. 1073.

All property exempt by general statutes from taxation is none the less subject to inheritance taxes on its transfer.

McKenna's Estate, 25 S. Dak. 369; 126 N. W. 611.

Matter of Kucielski, 144 App. Div. 100; 128 Supp. 768.

Thus where the state constitution limited the valuation of mining claims to the price paid therefor to the United States government they must none the less be inventoried at their full value for the purposes of taxing their transfer by inheritance.

Touhy's Estate, 35 Mont. 431; 90 Pac. 170.

c. CONSTRUCTION OF CONTRACTS.

The rule often affects the construction of contracts. For example, provisions in a ninety-nine year lease whereby the lessee is to pay "taxes, charges and assessments," do not require him to pay the inheritance tax imposed by reason of the death of the lessor because the tax is on the transfer and not on the property.

North Trust Co. v. Buck, 263 Ill. 222; 104 N. E. 1114.

d. PERSONALTY OF RESIDENT TAXED, THOUGH IN FOREIGN JURISDICTION.

Intangible assets of a resident decedent, though located in a foreign jurisdiction, must be included in the valuation of his estate, even though they have been distributed elsewhere.

Bullen v. Wisconsin, 240 U. S. 625; 36 S. Ct. Rep. 473.

A well-considered case in Massachusetts thus explains the rule:

"But whatever the form of the tax, the succession takes place and is governed by the law of the domicile; and, if

the actual situs is in a foreign country, the courts of that country cannot annul the succession established by the law of the domicile. *Dammert v. Osborn*, 141 N. Y. 564; 35 N. E. 1088. In further illustration of the extent to which the law of the domicile operates, it is to be noted that the domicile is regarded as the place of principal administration, and any other administration is ancillary to that granted there. Payment by a foreign debtor to the domiciliary administrator will be a bar to a suit brought by an ancillary administrator subsequently appointed. *Wilkins v. Ellett* and *Stevens v. Gaylord*, *ubi supra*; *Hutchins v. State Bank*, 12 Met. 421; *Martin v. Gage*, 147 Mass. 204, 17 N. E. 310. And the domiciliary administrator has sufficient standing in the courts of another state to appeal from a decree appointing an ancillary administrator. *Smith v. Sherman*, 4 Cush. 408. Moreover, it is to be observed, if that is material, that there has been no administration in New York, that the executor was appointed here, and has taken possession of the property by virtue of such appointment and must distribute it and account for it according to the decrees of the courts of this commonwealth. To say, therefore, that the succession has taken place by virtue of the law of New York would be no less a fiction than the petitioners insist that the maxim *mobilia sequuntur personam* is when applied to matters of taxation."

Frothingham v. Shaw, 175 Mass. 59; 55 N. E. 623.

In sustaining the right to tax personal property of a resident though out of the state the Connecticut court reasons thus:

"The same principle of universal jurisdiction of a state to determine the succession to and distribution of personal property situate within other states recognizes the power and duty of such states to provide local administrations in respect to such property in aid of the administration of the domicile. And our succession tax is computed with

reference to the value of the whole beneficial succession which passes by force of our law and payment of the tax thus computed is required from the principal administrator although some portion may be actually received by a beneficiary at the hands of an ancillary administrator.”

Hopkins' Appeal, 77 Conn. 644, 653; 60 A. 657.

So, it is held in California, that personal property of a resident decedent dying testate or intestate, located outside of the state, and which is never brought into the state for purposes of administration, is subject to an inheritance tax in that state under the application of the familiar maxim *mobilia personam sequuntur*, for by this rule the right of succession to such property is governed by the law of the domicile and not by the law of the locality of the property. This rule is subject to the limitation that there be no rule to the contrary in the state where the personal property is actually located. But there is no rule to the contrary in Massachusetts. The fact that the state in which the personal property is distributed on ancillary administration also imposes an inheritance tax does not violate any principle of constitutional law against double taxation.

Matter of Hodges, 50 Cal. Dec. 15.

“ The fact that the petitioner was able to obtain a transfer of a large part of the stock before the will was proved in this commonwealth does not affect his duty under the statute to pay the tax.”

Greves v. Shaw, 173 Mass. 205; 53 N. E. 72.

On the other hand the mere fact that an executor of a foreign decedent resides within the state does not make him subject to its laws in his capacity as executor or render the property over which the court of another state has given him jurisdiction liable to taxation in the state where he resides.

Commonwealth v. Peebles, 134 Ky. 121; 119 S. W. 774.

The court said:

“ One may occupy the two relations, of individual and executor; and, as individual, he may be subject to the laws of one state, and in his official capacity, he may be subject to the laws of another state, and he may, as executor, have the legal ownership of property over which the courts of the state in which he resides have no jurisdiction.” So the fact that an executor of an Ohio decedent who qualified in Ohio was domiciled in Kentucky did not render the assets of the Ohio decedent in the hands of the Kentucky executor liable to the tax in Kentucky.

e. INTANGIBLES OF NON-RESIDENT WITHIN THE STATE TAXABLE.

On the same theory it is reasoned that a state may tax the intangible property of a non-resident when within its jurisdiction.

“ The tax is on the transmission of the property being in the state and no reason has been assigned nor can be suggested why the broad language of the statute and the evident design of the legislature should be so narrowed and restricted as to exempt from this tax the property of a non-resident actually here notwithstanding that the same property may for other purposes be treated as constructively elsewhere.”

State v. Dalrymple, 70 Md. 294; 17 A. 82.

The right to succeed to property of a non-resident having its situs in New Jersey is taxable there.

Carr v. Edwards, 84 N. J. L. 667; 87 A. 132.

f. DOUBLE TAXATION.

This is the logical result although the courts declare that it is to be avoided if it is within the power of reason to do so.

Matter of James, 144 N. Y. 6, 11; 38 N. E. 961.

Matter of Cooley, 186 N. Y. 220, 227; 78 N. E. 939.

State v. Davis, 88 Kan. 849; 129 Pac. 1197.

The difficulty is that the legislatures of the several states having the power insist upon imposing it,—and the decisions confirm that power.

A few will illustrate:

“It has before this been pointed out (*Blackstone v. Miller*, 188 U. S. 189) that our state imposes a succession tax upon the theory or the fiction that the situs of the personal estate is the domicile of the owner while another state imposes it upon the ground that the actual situs is within the state and the same state may assume either position as the domicile of the decedent or the presence of the property within the state requires it.”

Stanton's Estate, 142 Mich. 491; 105 N. W. 1122.

Though Pennsylvania consistently adheres to the taxation of intangibles at domicile of owner and not within the state under ancillary administration;

McKeen v. Northampton County, 49 Pa. St. 519.

When the distribution and administration are to be made by the Pennsylvania courts held taxable.

Lewis' Estate, 203 Pa. St. 211, 217; 52 A. 205.

“The fact that two states dealing each with its own law of succession, both of which the plaintiff in error has to invoke for her rights have taxed the right which they respectively confer, gives no cause for complaint on constitutional grounds. *Blackstone v. Miller*, 188 U. S. 189, 206, 207; 23 S. Ct. Rep. 277. The fact that the property may be subject to a similar burden in another state does not deprive this state of its power to impose the tax here upon the property which passes by inheritance or by will under our laws.”

Mann v. Carter, 74 N. H. 345, 352; 68 A. 130.

“The great weight of authority favors the principle adopted by the New York Court of Appeals holding that

the tax imposed is on the right of succession under a will or by devolution in case of intestacy, and that as to personal property its situs, for the purpose of a legacy or succession tax, is the domicile of the decedent, and the right to its imposition is not affected by the statute of a foreign state, which subjects to similar taxation such portion of the personal estate of any non-resident testator or intestate as he may take and leave there for safe keeping or until it should suit his convenience to carry it away."

Hartmann's Appeal, 70 N. J. Eq. 664, 667; 62 A. 560.

The leading case is *Matter of Blackstone* which arose in New York, was decided by the Appellate Division, 69 App. Div. 127; 74 Supp. 508, was affirmed by the Court of Appeals without opinion 171 N. Y. 682; 64 N. E. 1118, on the authority of *Matter of Houdayer*, 150 N. Y. 37; 44 N. E. 718. It then went to the United States Supreme Court.

The testator, a resident of Illinois, had \$4,840,000 on deposit with New York bankers and both states imposed inheritance taxes. The appeal was from the tax sought to be collected by the New York state comptroller.

The United States Supreme Court said, in sustaining the tax: "No doubt this power on the part of two states to tax on different and more or less inconsistent principles leads to some hardship. It may be regretted also that one and the same state should be seen taxing on the one hand according to the fact of power and on the other, at the same time, according to the fiction that in successions after death *mobilia sequuntur personam* and domicile governs the whole but these inconsistencies infringe no rule of constitutional law. If the transfer of the deposit necessarily depends upon and involves the law of New York for its exercise or, in other words, if the transfer is subject to the power of the state of New York, then New York may subject the transfer to a tax. But it is plain that the transfer does

depend upon the law of New York not because of any theoretical speculation concerning the whereabouts of the debt but because of the practical fact of its power over the person of the debtor. What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay.”

Blackstone v. Miller, 188 U. S. 189, 205; 23 S. Ct. Rep. 277.

B—THE TRANSFER TAKES PLACE AT DEATH.

This rule is almost equally important in the law of inheritance taxation as is the rule that the tax is on the transfer of property and not on property itself.

It is not a transfer between the living that is taxed, but a transfer from the dead hand to the living hand; and therefore it is the doctrine, subject to certain limitations and exceptions, that the transfer which is the subject of the tax takes place at death.

The right of the state to the tax is coincident with the devolution of title or interest, and the right of the state to exact a tax, as well as the obligations of the transferee to pay it, depend not upon a formal, complete, and immediate change of title or possession, but upon the instant right to a beneficial share or interest subject only to the due administration of the estate.

Matter of Ramsdill, 190 N. Y. 492; 83 N. E. 584.

This same rule was recently enunciated by the Supreme Court of Massachusetts in construing a similar statute where that court said: “The rights of all parties, including the right of the commonwealth to its tax, vest at the death of the testator. It is true that the interest of a legatee is subject to an accounting, but it is an interest in the existing fund, and it is analogous to that of a *cestui que trust*.”

Kingsbury v. Chapin, 196 Mass. 533; 82 N. E. 700.

“ The transfers take place necessarily at the moment of death, for the will on the one hand and the intestate laws on the other operate and speak from that date.”

Matter of Seaman, 147 N. Y. 69; 41 N. E. 401.

Matter of Abraham, 151 App. Div. 441; 135 Supp. 891.

Matter of Meyer, 83 App. Div. 381; 82 Supp. 329.

The effect of the rule has been strikingly illustrated in two cases in New York.

In *Matter of Dreyfous*, 18 Supp. 767, 28 Abb. N. C. 27, the decedent died on the same day that the amendment of 1891, chapter 215, was signed by the governor, but death occurred a few hours before the signature. It was held that the amendment did not apply.

On the other hand, where it was stipulated that death occurred on the same day the amendment was signed by the governor, but a few hours after the signature, it was held that the amendment applied.

Matter of Lane, 157 App. Div. 694; 142 Supp. 788.

It is therefore important that the governor or his secretary make a memorandum of the hour the act was signed and it is the practice of New York executives to do so.

1. Vested Right of the State.

The legislature of California sought to exempt a bequest to Leland Stanford university by the will of its founder; but the court held that the right of the state to the tax vested at Stanford's death and could not be given away. It said: “ It is only by virtue of the statute that an heir is entitled to receive any of his ancestor's estate; and the legislature can provide that the whole or only a portion shall go to the heirs or other beneficiaries upon the death of the ancestor. This being so, and the legislature in this case having determined that 95 per cent of the decedent's estate may go to his heirs, and that 5 per cent be retained

by the state, it is too clear for argument that this 5 per cent vested in the state at the same time that the other 95 per cent vested in the heirs.”

Stanford's Estate, 126 Cal. 112; 54 Pac. 259; 58 Pac. 462.

The result of this doctrine was strikingly illustrated in the recent case of *National Safe Deposit Co. v. Stead*, 250 Ill. 284; 95 N. E. 973, where the right of the state to inspect the contents of a decedent's safe deposit box was challenged. In sustaining the right the court reasoned thus: The relation between a safe deposit company and the lessee of one of its boxes is that of bailor and bailee. Its duty is to deliver the property on the death of the lessee. The right to succeed to the property is purely statutory. The inheritance tax is on the right to succeed to property and not on the property. Therefore under the tax, the state has a vested financial right in the estate of the decedent, and therefore it has a right to know what property is in the safe deposit box.

Another apt illustration is afforded by *Matter of White*, 208 N. Y. 64; 101 N. E. 793. Here the testator died in March, 1908, leaving a life estate to a grandson with remainder to an exempt charity. The grandson died in November, 1908, before the estate was distributed, and the Appellate Division held that the actual duration of the life tenant's life was the measure of its value. But the Court of Appeals applied the doctrine that the tax was on the transfer and that the transfer took place at the death of the testator. At the date of that death the grandson's expectation of life was about 35 years, and the court held that the value of the life estate was to be determined, not by the actual duration, but the theoretical expectation of life. The court said at page 67: “The true test by which the tax is to be measured is the value of the interest or estate transferred at the time of the transfer thereof. The interest of the life beneficiary accrued on the death of the

testatrix and its value as of the time of that occurrence is the sum to which the rate per cent as fixed by the statute should be applied."

2. Renunciation by Legatee.

An apparent exception to the rule that the right of the state to the tax vests at death is found in the right of a legatee to renounce his legacy. Obviously this would make no difference if all beneficiaries were taxed alike; for the renounced legacy must either pass under the residuary clause or by intestacy and so be taxed. It is therefore the act of the state itself in exempting or taxing at a lower rate that defeats or abridges its vested interest. A distributee in case of intestacy cannot renounce so as to avoid the tax.

This principle was illustrated in *Matter of Wolfe*, 89 App. Div. 349; 85 Supp. 949; aff. 179 N. Y. 599; 72 N. E. 1152. Executors who would have been taxed at the 5 per cent rate renounced and the property passed to testator's children under the residuary clause who were taxable at 1 per cent. The state claimed a vested right to the 5 per cent rate. The court held that the tax must be imposed as the property actually passed under the will.

To the same effect is *Owings v. State*, 22 Md. 116.

This presents a theoretical difficulty. If the right of the legatee vests at death and at that instant the right of the state vests also, the act of the beneficiary should not affect the vested right of the state. As will be seen this departure from a strictly scientific application of the law has opened a loophole for collusive arrangements to defeat the tax.

It is also obvious that the decision rests upon the theory that the tax is not on the right to transmit, but on the right to receive.

Where heirs may claim either under a deed delivered *inter vivos*, but not recorded, or under a will; and they

elect to take under the deed and renounce the devise under the will there is no transfer under the latter.

Matter of Mather, 90 App. Div. 382; 85 Supp. 657; *affd.*, 179 N. Y. 526; 71 N. E. 1134.

By an extension of the same doctrine it is held that a legatee may accept in part and renounce in part, leaving the balance to pass under other provisions of the will.

Matter of Merritt, 155 App. Div. 228; 140 Supp. 13.

3. Law in Force at the Date of the Proceedings Controls Procedure.

As to procedure the law in force at the rate of the proceedings controls but as to substantive rights, the law in force at the date of death.

Estate of Woodard, 153 Cal. 39; 94 Pac. 242.

Estate of Kennedy, 157 Cal. 517, 526; 108 Pac. 280.

“It has often been held by this court that the tax is not a tax upon property but upon the right of succession and hence the true test of value by which the tax is to be measured is the value of the estate at the time of the transfer of title and not its value at the time of the transfer of possession.”

Matter of Davis, 149 N. Y. 539, 547; 44 N. E. 185.

Matter of Sloane, 154 N. Y. 109; 47 N. E. 978.

4. Rights Vested Prior to Death Cannot be Taxed.

As the transfer is at death rights which vested prior to the transfer cannot be taxed. So where testator died prior to the statute, leaving a life estate and remainders, it was held that the transfer does not take place at the death of the life tenant for the right to the remainder vested at the death of the testator and the statute could not tax a transfer which had already taken place.

Matter of Pell, 171 N. Y. 48; 63 N. E. 789.

Commonwealth v. Wellford, 114 Va. 372; 76 S. E. 917.

So a trust deed reserving a life estate vests the remainder at the date of the deed and the transfer is not taxable under a subsequent statute.

State ex rel. Toser v. Probate Court, 102 Minn. 268; 113 N. W. 888.

In another case a testatrix made a deed reserving a life estate with power of revocation which was never exercised and by will devised the same property to the grantee of the deed. She died October 20, 1906, and the transfer tax act became a law March 15, 1906. Held that nothing passed under the will as the life estate expired when she died and that the statute could not tax the transfer by deed made in 1896 — ten years before.

Commonwealth v. McCauley's Executor, 166 Ky. 450; 179 S. W. 411.

The principle is well illustrated by two New York cases. In *Matter of Harbeck*, 161 N. Y. 211; 55 N. E. 850, the testator died in 1896 exercising a power of appointment created by the will of an ancestor dying in 1878, prior to the enactment of the transfer tax statute. The court held that the effect of the exercise of the power was to write the names of the appointees into the will of the creator of the power and that the beneficiaries took under that will and therefore their interests so acquired were not subject to the tax. The legislature then amended the act to tax the exercise of the power as though the property passing under its exercise belonged absolutely to the donee of the power. This amendment came up for construction in *Matter of Dows*, 167 N. Y. 227; 60 N. E. 439. The power in that case was created under the will of a testator dying in 1880, prior to the statute, and was exercised by the will of a testator dying in 1899, after the statute. It was held that the legislature had a right to declare that the transfer took place on the exercise of the power and not at its creation and that the transfer was therefore taxable. This was sustained in *Orr v. Gilman*, 183 U. S. 278; 22 S. Ct. Rep. 213.

To the same effect is

Miller v. McLaughlin, 141 Mich. 425; 104 N. W. 777.

5. Amendment and Repeal.

The same principles apply in case of amendment and repeal as in construing the original enactment. An amendment creating exemptions will not be given a retroactive effect.

Cornell v. Crosby, 210 Ill. 380; 71 N. E. 350.

Procedure may be changed and applied to taxation of estates when death has already occurred but the substantive rights remain unaffected.

Matter of Davis, 149 N. Y. 539; 44 N. E. 185.

“ The legislature might perhaps abolish all laws for the collection of debts; this however would not have the effect of paying or discharging the debts or in the least impair the obligation to pay them.”

Estate of Stanford, 126 Cal. 112; 54 Pac. 259; 58 Pac. 462.

So when testator died while the tax act was in force, but no steps had been taken for collection and the repealing act saved no rights of appraisal; in an action in equity to quiet title held: “ If there be a valid claim against such property the plaintiff cannot in this equitable proceeding quiet his title against such claim, even though the same be unenforceable by legal proceedings, without paying the claim.”

Trippet v. State, 149 Cal. 521; 86 Pac. 1084.

Estate of Lander, 66 Cal. App. 744; 93 Pac. 202.

That the right of the state to the tax vests at death and cannot be lost by subsequent repeal of the statute was strikingly illustrated in a recent case in New York — *Matter of Wright*, 214 N. Y. 714; 108 N. E. 1112. There the testator died a non-resident in 1909. By the will of his mother a life interest in a fund was given to his brother and in default of issue of the brother to the testator. The

brother lived until 1912 when he died without issue. The remainder then passed under the will of testator. The trust fund consisted of stock in a New York corporation. In 1911 the statute taxing intangible personal property of non-residents was repealed. It was contended that the remainder interest, being defeasible by the birth of issue to the brother, could not be ascertained on the death of the remainderman in 1909, and was not taxable until 1912 — when the life tenant died; and, as the statute was then repealed, no tax was due and the Appellate Division so held, two justices dissenting. The Court of Appeals held that the tax accrued on the death of the remainderman in 1909, although the life tenant survived him, and, being vested in the state, was not defeated by the repealing act of 1911.

When the later act repealing the former is in part the same, or in similar language to the same effect, it will be construed as continuing the former statute to that extent.

Howard's Estate, 80 Vt. 489; 68 A. 513.

An amendment is some indication that the law did not cover the case before.

Matter of Enston, 113 N. Y. 174; 21 N. E. 87.

Successive laws are construed as a continuation of one another.

Matter of Prime, 136 N. Y. 347; 32 N. E. 1091.

Matter of Brundage, 31 App. Div. 348; 52 Supp. 362.

The words “ this act ” and “ this article ” apply to and include the original and each successive act.

Matter of Embury, 20 Misc. 75; 45 Supp. 821; aff. 154 N. Y. 746; 49 N. E. 1096.

A statute repeals by implication the repugnant provisions of another statute passed the same day but at an earlier hour.

State v. District Court, 41 Mont. 357; 109 Pac. 438.

Bailey v. Drane, 96 Tenn. 16; 33 S. W. 573.

The court said:

“ It is of no consequence, in legal contemplation, that the two enactments were made at the same session of the legislature and on the same day. The repugnance and conflict are no less on that account but are the same that they would have been if the two acts had been passed and approved at different sessions far apart. The reason and necessity for the rule recognizing repeals by implication is the same in one case as in the other. The two provisions referred to cannot coexist. They cannot stand together. This being so the latter one must prevail.”

So it is held that the passage of a general revenue act without reference to the inheritance tax has been held to repeal that tax by implication.

Fox v. Commonwealth, 16 Gratt. 1.

Succession of Frigalo, 123 La. 71; 48 So. 652.

Bailey v. Drane, 96 Tenn. 16; 33 S. W. 573.

Zickler v. Union Bank and Trust Co., 104 Tenn. 277; 57 S. W. 341.

A saving clause in a repealing act does not apply to remainders after life estates where the life tenant still survives.

Clapp v. Mason, 94 U. S. 589.

Mason v. Sargent, 104 U. S. 689.

United States v. Rankin, 8 Fed. 872.

United States v. Hazard, 8 Fed. 380.

United States v. N. Y. Ins. and Trust Co., Fed. Cas. 15,873.

Sturges v. U. S., 117 U. S. 363; 6 S. Ct. Rep. 767.

United States v. Kelley, 28 Fed. 845.

Repeal cannot affect a case pending in the U. S. Supreme Court.

Campbell v. California, 200 U. S. 87; 26 S. Ct. Rep. 182.

An unconstitutional statute is void and a tax paid thereunder may be recovered.

Matter of Brenner, 170 N. Y. 185; 63 N. E. 133.

So it was held in New Jersey that the inheritance tax of 1894 was not to be a property tax and was valid, and remained unaffected by the void act of 1906.

Eastwood v. Russell, 81 N. J. L. 672; 81 A. 108.

The act of 1909 rendered the act of 1906 enforceable.

Sawter v. Shoenthal, 83 N. J. L. 499; 83 A. 1004, reversing judgment, 81 N. J. L. 197; 80 A. 101.

6. Gains or Losses During Administration.

As the transfer takes place at death and the tax then accrues, interest that accrues or other gains during administration are not taxed — as the transfer has already taken place and they are the property of the living and not of the dead.

Matter of Vassar, 127 N. Y. 1; 27 N. E. 394.

Of course as to interest accrued prior to death, it belonged to the decedent and must be valued as part of the estate.

Matter of Hewitt, 181 N. Y. 547; 74 N. E. 1118.

The practical application of this rule has sometimes worked serious hardships as when an equity of redemption, valued on appraisal at \$8,000, was wiped out by a mortgage foreclosure.

Matter of Meyer, 209 N. Y. 386; 103 N. E. 713.

When the executor was forced to sell stocks at a loss during administration which caused a shrinkage of nearly one-fourth of the estate the tax was imposed on the value at death and no deduction was allowed.

Matter of Penfold, 216 N. Y. 163; 110 N. E. 497.

In enforcing the rule despite this apparent injustice the court said:

“ It is by statute due and payable at the time of the transfer, that is, at the death of the decedent. It accrues at that

time and the amount of the tax is not affected by an increase or decrease in the clear market value of the estate between the date of the decedent's death and its subsequent distribution among beneficiaries or transferees under the will. The necessity for certainty and uniformity in the time when the tax accrues and becomes due and payable required the adoption by the legislature of a fixed and arbitrary rule."

The rule was applied in California in a still harsher case where the executor embezzled \$98,000 and the beneficiaries never received the money.

Hite's Estate, 159 Cal. 392; 113 Pac. 1072.

But the tax is imposed before it reaches the legatee and before it has become his property.

Matter of Finnen, 196 Pa. St. 72; 46 A. 269.

Matter of Hartmann, 70 N. J. Eq. 664; 62 A. 560.

In view of this obvious injustice the Federal Statute and the inheritance tax law of Rhode Island adopted in 1916 allow a deduction for losses during administration except a fall in the market price of stocks. On the other hand Montana taxes any increase during administration including increase in value of securities.

Matter of Tuohy, 35 Mont. 431; 90 Pac. 170.

Curiously enough both the Rhode Island Statute and the Federal act impose a tax upon the right to transmit. Obviously such a tax must accrue at death and not upon distribution which makes the deduction for losses after death distinctly an act of grace.

Its justice and propriety however are so apparent that these statutes will doubtless be followed in other states as their acts are amended in the light of experience with the practical application of the transfer tax laws.

In the *Matter of Penfold*, *supra*, an appeal to the Supreme Court of the United States is pending.

7. Exceptions to the Rule.

The general rule that the transfer takes place and all rights accrue at death is subject to two exceptions.

a. BY NATURE OF THE TRANSFER.

Where there is a trust deed reserving a life estate and a tax is by the statute imposed upon such a transfer the law in force at the date of the trust deed governs.

Matter of Keeney, 194 N. Y. 281, 287; 87 N. E. 428.

Keeney v. New York, 222 U. S. 525, 530; 32 S. Ct. Rep. 105.

Matter of Webber, 151 App. Div. 539; 136 Supp. 83.

State ex rel. Tozer v. Probate Court, 102 Minn. 268; 113 N. W. 888.

Commonwealth v. McCauley's Executor, 166 Ky. 450; 179 S. W. 411.

But where power to revoke is reserved the transfer is not complete and the tax accrues at death.

Line's Estate, 155 Pa. St. 378; 26 A. 728.

Matter of Dana, 164 App. Div. 45; 149 Supp. 417; aff. 214 N. Y. 710.

Where there is a transfer in contemplation of death the tax accrues not at death, but at the date of such transfer, even though no proceedings can be had for its collection until after the death of the donor

Matter of Hodges, 215 N. Y. 447; 109 N. E. 559.

b. BY STATUTE.

The legislature has power to declare that the tax shall accrue at any time while the law retains control of a decedent's property and so may retroactively be applied to estates still in process of distribution, though the owner died prior to the statute, on the theory that the tax is on the right to receive and may be imposed on the legatee's interest at any time before he actually receives the property.

Cahen v. Brewster, 203 U. S. 543; 27 S. Ct. Rep. 174.

Ferry v. Campbell, 110 Ia. 290, 299; 81 N. W. 604.

Gelsthorpe v. Furnell, 20 Mont. 299; 51 Pac. 267.

Matter of Vanderbilt, 50 App. Div. 246; 63 Supp. 1079. Aff. 163 N. Y. 597; 57 N. E. 1127.

But the statute must be explicit and no such retroactive effect will be implied.

Eury v. State, 72 Ohio St. 448; 74 N. E. 650.

Nor can it constitutionally apply to a remainder interest when the life tenant has received the property.

Miller v. McLaughlin, 141 Mich. 425; 104 N. W. 777.

Matter of Pell, 171 N. Y. 48; 63 N. E. 789.

Where a non-resident died prior to the statute but his property remained in the state and still undistributed, statute held not retroactive.

Matter of Pettit, 65 App. Div. 30; 72 Supp. 469. Aff. 171 N. Y. 654; 63 N. E. 1121.

As we have seen statutes may also allow for losses or tax gains during administration.

C.—GENERAL RULES OF CONSTRUCTION.

1. Strict or liberal.

The inheritance tax statutes should be strictly construed in favor of the tax payer.

People v. Griffith, 245 Ill. 532; 92 N. E. 313.

Matter of Enston, 113 N. Y. 174; 21 N. E. 87.

Eidman v. Martinez, 184 U. S. 578; 22 S. Ct. Rep. 515.

Matter of Fayerweather, 143 N. Y. 114; 38 N. E. 278.

Estate of Ullmann, 263 Ill. 528; 105 N. E. 292.

But whether strict or liberal the construction should at least be fair and should be to uphold the law rather than to declare it unconstitutional.

Knox v. Emerson, 123 Tenn. 409, 415; 131 S. W. 972.

And should uphold the tax as to all property fairly and reasonably within its scope.

State v. Scales (N. C.), 90 S. E. 439.

And the words must be given their usual and ordinary meaning.

McCluskey v. Cromwell, 11 N. Y. 593.

Matter of O'Neil, 91 N. Y. 516.

Matter of Daly, 79 Misc. Rep. 586; 141 Supp. 199.

A construction which leads to an absurdity should be avoided.

Howard's Estate, 80 Vt. 489; 68 A. 513.

Effect must be given to all the words so that none are construed as void or superfluous.

Stevens v. Bradford, 185 Mass. 439; 70 N. E. 425.

And, in any event, the constitutionality of an act cannot be assailed by one who is not affected adversely.

Damon's Estate, 10 Cal. App. 542; 102 Pac. 684.

Matter of Kenney, 194 N. Y. 281; 87 N. E. 428.

Where a particular subject is within the scope of the law and an exemption from taxation is claimed on the ground that the legislature has not provided proper machinery for accomplishing the legislative purpose in a particular instance a liberal rather than a strict construction should be applied, and if by fair and reasonable construction of its provisions the purpose of the statute can be carried out, that interpretation ought to be given to effectuate the legislative intent.

Matter of Stewart, 131 N. Y. 274, 282; 30 N. E. 184.

Matter of Hickock, 78 Vt. 259; 62 A. 724.

And a statute may be declared void in part and yet sustained as to the rest, if severable.

Union Trust Co. v. Durfee, 125 Mich. 487; 84 N. W. 1101.

Friend v. Levy, 76 Ohio St. 26; 80 N. E. 1036.

2. Exemptions.

The general rule is that exemptions should be strictly construed against the exemption and in favor of the tax.

Re Bull, 153 Cal. 715; 96 Pac. 366.

State v. N. Y. Meeting of Friends, 61 N. J. Eq. 620; 48 A. 227.

Re Gopsill, 77 N. J. Eq. 215; 77 A. 793.

The exempting clause should not be enlarged at the expense of the enacting clause.

McDowell v. Addams, 51 Pa. St. 438.

All grants in derogation of taxation must be strictly construed.

Packer's Estate, 246 Pa. St. 133; 92 A. 75.

An exemption to local but not to foreign charities is valid.

Board of Education v. Illinois, 203 U. S. 553; 27 S. Ct. Rep. 171.

A few decisions take the opposite view. It is held that an exemption to a public library should be liberally construed.

Curtis' Estate, 88 Vt. 445; 92 A. 965.

Matter of Moore, 66 Misc. 116; 122 Supp. 828.

And the New York Appellate Division has recently adopted a similar view in regard to charitable corporations generally.

Matter of Rockefeller, 177 App. Div. 786; 165 Supp. 154.

But the U. S. Supreme Court holds that reasonable doubt should be resolved in favor of the taxing power.

“Exemptions from taxation are not favored by law, and will not be sustained unless such clearly appear to have been the intent of the Legislature. Public policy in all the States has almost necessarily exempted from the scope of the taxing power large amounts of property used for religious, educational, and municipal purposes; but this list ought not to be extended except for very substantial reason; and while as we have held in many cases Legislatures may, in the interest of the public, contract for the exemption of other property, such contract should receive a strict interpretation and every reasonable doubt be resolved in favor of the taxing power.”

Yazoo & Miss. V. Ry. Co. v. Adams, 180 U. S. 1; 21 S. Ct. Rep. 240.

3. Retroactive or Prospective.

Statutes are construed as prospective unless declared specifically to be retroactive.

Gilbertson v. Ballard, 125 Ia. 420; 101 N. W. 108.

Lacy v. State Treasurer, 152 Ia. 477; 132 N. W. 843.

Tilford v. Dickinson, 79 N. J. L. 302; 75 A. 574.

Provident Hospital v. People, 198 Ill. 495; 64 N. E. 1031.

Lombard's Appeal, 88 Me. 587; 34 A. 530.

Matter of Miller, 110 N. Y. 216; 18 N. E. 139.

Matter of Van Kleeck, 121 N. Y. 701; 25 N. E. 50.

Matter of Pettit, 65 App. Div. 30; 72 Supp. 469. Aff. 171 N. Y. 654; 63 N. E. 1121.

As we have seen, vested rights cannot be affected retroactively.

Matter of McKelway, 221 N. Y. 15, 116 N. E. 348.

On the other hand no one has a vested right to a given form of procedure, and where a statute failed to provide for due notice and a hearing the defect can be cured retroactively. Where the original act did not provide for notice of appraisal but notice was provided for by an amendment which was given a retroactive effect the court said: "There was no valid objection to the levy of such a tax. That is to say, it is not an illegal or unauthorized tax. It is invalid simply because the legislature did not provide for notice of the proceedings by which the amount of the tax is to be ascertained."

Ferry v. Campbell, 110 Ia. 290, 299; 81 N. W. 604.

And it is held that a repeal of the statute of limitations may be construed retroactively.

Matter of Moenich, 39 Misc. 480; 80 Supp. 222.

But exemptions will not be so construed.

Matter of Ryan, 3 Supp. 136.

Sherrill v. Christ Church, 121 N. Y. 701; 25 N. E. 50.

“ That the legislature may cure such defects is fundamental. Appellant's counsel say, however, that the estate vested at the death of the testator and that any change made thereon by the legislature after his death is unconstitutional and void. As to the real estate this is true, perhaps, although it is best that we do not decide the point on the arguments before us. As to the personal estate the rule seems to be different however. While the distributive share is a vested interest,— that is, vests in point of right at the time of the death of the intestate,—yet the persons who take and the amount to be received must be ascertained and determined by the Probate court. So long as the entire estate remains unsettled the legislature may cure any defects in the law creating a lien thereon and the act may be retroactive.”

Where the distribution is delayed by the provisions of the will for many years and an inheritance tax law is enacted in the meantime the shares of the heirs at law are subject to said tax.

Hostetter v. State, 26 Ohio Circuit, 702.

4. Notice and a Hearing Essential.

A statute that does not provide for it is unconstitutional.

Matter of McPherson, 104 N. Y. 306; 10 N. E. 685.

Ferry v. Campbell, 110 Ia. 290; 81 N. W. 604.

Where the act provides for a review of all matters before the Probate court and also for an appeal, there is a “ day in court ” for all who consider themselves aggrieved and an act which does not provide for a notice of appraisal but gives these remedies is constitutional.

Hostetter v. State, 26 Ohio Circuit, 702.

Union Trust Co. v. Probate Judge, 125 Mich. 487; 84 N. W. 1101.

5. Copied or Adopted Statutes.

When a statute is copied or adopted from another state the construction put upon it by courts of that state is also adopted.

People v. Carpenter, 264 Ill. 400; 106 N. E. 302.

Mann v. Carter, 74 N. H. 345; 68 A. 130.

Neilson v. Russell, 76 N. J. L. 655; 71 A. 286.

Black v. State, 113 Wis. 205; 89 N. W. 522.

Miller v. McLaughlin, 141 Mich. 425; 104 N. W. 777.

In view of the general similarity of the statutes and the frequency with which they are adopted or copied this rule is of wide application and of manifest importance.

6. Practical Construction.

Where the language of the act is doubtful and a practical construction has been given it by the collection officers and has long been acquiesced in the courts will recognize it; but only under these circumstances.

“It is immaterial what the practice of the administrative officers of the Commonwealth charged with the duty of collecting legacy and succession taxes may have been in regard to considering property within and without the Commonwealth. It is only when a statute is of doubtful import and the practice has been long continued and acquiesced in by all parties interested that it can be resorted to in aid of the construction of the statute. In the present case we discover no such ambiguity in the meaning of the statute as to justify as an aid to construction a resort to the practice of the officers charged with its execution, even if we assume that the practice had been sufficiently long continued to render it otherwise admissible.”

Attorney-General v. Barney, 211 Mass. 134; 97 N. E. 750.

D.— CONFLICT OF LAWS.**1. Jurisdiction.**

Adjudications as to residence or domicile though essential to the jurisdiction of one state are not binding on courts of another state and are there open to collateral attack.

Matter of Horton, 217 N. Y. 363; 111 N. E. 1066.

Tilt v. Kelsey, 207 U. S. 43; 28 S. Ct. Rep. 1.

2. Full Faith and Credit.

When after publication for claims a final decree is entered it is a bar to a proceeding in another state for the collection of a transfer tax providing the court which entered such a decree had jurisdiction to probate the will.

Tilt v. Kelsey, 207 U. S. 43; 28 S. Ct. Rep. 1.

So it was held in Washington that when “ a resident of the state of Maine died, leaving estate there and in this state, and his will was probated there, and all legacies to collateral heirs and strangers to the blood and all debts were, by order of the probate court in Maine paid out of the estate situated in that state, leaving the property in this state to be divided between his widow and son under the residuary clause in the will, the estate in the state of Washington is not chargeable with the increased inheritance tax upon legacies to collateral heirs and strangers to the blood at the rate of 3 and 6 per cent.; since comity requires that full faith and credit be given to the proceedings in the probate court in Maine, ordering those legacies to be paid out of the estate within its jurisdiction and under its control, and such order is conclusive on the courts of this state; and since the inheritance tax is to be deducted from the legacies and paid by the legatees, and the executor in this state has no opportunity to collect the same from the legatees chargeable therewith.’

In re Clark's Estate, 37 Wash. 671; 80 Pac. 267.

3. Proof of Foreign Laws.

These must be established like any other fact by proper evidence.

Matter of Cummings, 142 App. Div. 377; 127 Supp. 109.

A duly authenticated affidavit by an attorney of the foreign state is competent.

Matter of Vivianti, 206 N. Y. 656. (See Table of Cases.)

Tilt v. Kelsey, 207 U. S. 43; 28 S. Ct. Rep. 1.

4. As to Sister States.

The inheritance tax statutes cannot discriminate in favor of their own residents as against residents in another state.

Johnson's Estate, 139 Cal. 532; 73 Pac. 424.

In this case there were two appeals, one taken by resident nieces and nephews and the other by non-resident nieces and nephews, citizens of sister states, from an order assessing inheritance tax against them, on the grounds that the Statutes of 1897, page 77, contained an amendment exempting "nieces or nephews when a resident of this State" and that the effect of this amendment is to relieve not only nieces and nephews, resident of this state, but also nieces and nephews resident of other states of the Union, and the Supreme Court so held.

The *Estate of Mahoney*, 133 Cal. 180, 65 Pac. 389, was reversed, and the amendment exempting nieces and nephews resident of this state held to be constitutional and not in violation of section 2 of article IV of the Constitution of the United States, nor of section 1978 of the Revised Statutes of the United States; and that said section of the Constitution declaring that "the citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several states" does not strike

down or limit the right of a state to confer such immunities and privileges upon its own citizens; that the clause of the Constitution is protective merely and not destructive nor even restrictive.

“ It nowhere intimates that an immunity conferred upon citizens of a state, because not in terms conferred upon citizens of sister states, shall therefore be void.”

“ It leaves to the state perfect freedom to grant such privileges to its citizens as it may see fit, but secures to the citizens of all other states, by virtue of the constitutional enactment itself, the same rights, privileges, and immunities.”

“ It is a canon of construction that an act of the legislature will yield to the constitution so far as necessary, but no further. The constitutional immunity goes only to citizens of sister states, and there is a clear distinction thus recognized between citizens of the states and citizens of the United States who are not citizens of any state, as well as citizens of alien states. By virtue of the constitution of the United States, the immunity which the legislature by the amendment of 1897 conferred upon citizens of this State is extended to citizens of sister states, but the immunity goes no further. Citizens of territories, of the District of Columbia, and of our new possessions, as well as aliens, are not exempted, and their property is thus liable for the tax.”

5. As Against Aliens Protected by Treaties.

Several of the states have undertaken to discriminate in their rates or exemptions against alien non-residents. Where the interests of aliens are protected by treaties such discriminations have been held void.

Adams v. Akelund, 168 Ill. 632, 48 N. E. 454.

Matter of Stixrud, 58 Wash. 339; 109 Pac. 343.

McKeown v. Brown, 167 Ia. 489; 149 N. W. 593.

Matter of Strobel, 39 Supp. 169; aff. 5 App. Div. 621.

And a treaty containing a "most favored nation clause" affords this protection, thus practically nullifying such statutes, as practically all treaties so provide.

Brown v. Daly, 172 Ia. 379; 154 N. W. 602.

But a treaty negotiated subsequent to the statute cannot affect the state's right to its tax.

Prevost v. Greneaux, 60 U. S. 1; 19 How. 1.

Succession of Schaffer, 13 La. Ann. 113.

The attempt of the Federal Statute to discriminate against alien non-residents in the matter of exemptions will soon bring the subject again before the courts.

On the other hand, while aliens cannot be discriminated against in violation of a treaty they are no better off than citizens and must pay succession taxes at the same rate.

Matter of Strobel, 39 Supp. 169; aff. 5 App. Div. 621.

6. Reciprocal Provisions.

Minnesota in 1911 exempted non-resident transfers when the laws of the state of domicile "exempt or do not impose a tax upon transfers of personal property of residents of Minnesota having its situs in such state." A state which imposes such a tax upon the personal property of collaterals and strangers only does not come within the provision. This provision has since been repealed.

Graff v. Probate Court, 128 Minn. 371; 150 N. W. 1094.

Under "reciprocal" statute of Massachusetts property of a resident of New York in that state pays only so much tax as is in excess of the tax imposed in New York.

Bliss v. Bliss, 221 Mass. 201; 109 N. E. 148.

PART II—THE TRANSFER

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PART II—THE TRANSFER

A.—TRANSFERS BY WILL.

1. Testamentary Provisions Which May Affect the Tax.

The provisions of the will necessarily affect the transfer under it and some of the most complex problems of inheritance taxation arise from the construction of wills. Most of the states have statutes prohibiting the suspension of the power of alienation of real estate and the absolute ownership of personal property and other restrictions upon the power of testators in the creation of future and artificial estates but this subject is beyond the scope of this work.

a. WHAT A TESTATOR CANNOT DO.

He may not direct that no inventory of his estate be made or filed with the court, for he cannot nullify the law.

Matter of Morris, 138 N. C. 259; 50 S. E. 682.

He cannot change real estate into personal property by the direction for its sale (except in Pennsylvania).

Connell v. Crosby, 210 Ill. 380; 71 N. E. 350.

McCurdy v. McCurdy, 197 Mass. 248; 83 N. E. 881.

Matter of Mills, 86 App. Div. 555; 67 Supp. 956; 84 Supp. 1135; aff. 177 N. Y. 562; 69 N. E. 1127.

He cannot avoid the tax by large bequests to executors in lieu of commissions, as this is forbidden by all the statutes.

People v. Bauder, 271 Ill. 446; 111 N. E. 598.

He may not declare that the tax shall be charged as an expense of administration, and thus have the tax deducted from the amount of the estate that was taxable.

Matter of Swift, 137 N. Y. 77; 32 N. E. 1096.

On this subject the Court said, in the Swift case:

“ Another question, which I shall merely advert to in conclusion, arises upon a ruling of the surrogate with respect to appraisement, in connection with a clause of the will directing that the amount of the tax upon the legacies and devises should be paid as an expense of administration. The appraiser, in ascertaining the value of the residuary estate for the purpose of taxation, deducted the amount of the tax to be assessed on prior legacies. The surrogate overruled him in this, and held that there should be no deduction from the value of the residuary estate of the amount of the tax to be assessed, either upon prior legacies, or upon its value. He held that the legacies taxable should be reported, irrespective of the provision of the will; and that a mode of payment of the succession tax prescribed by will is something with which the statute is not concerned. I am satisfied with his reasoning and can add nothing to its force. Manifestly, under the law that which is to be reported by the appraiser for the purpose of the tax is the value of the interest passing to the legatee under the will, without any deduction for any purpose, or under any testamentary direction.”

b. WHAT HE CAN DO.

There are a number of things that a testator can do, however, to lessen or avoid the tax by the provisions of his will.

The most obvious is to cut up his estate into numerous legacies so small that they will be within the exemption, or pay the smallest percentage under the graded rates.

He can also leave his property to an exempt charitable corporation which might be induced to make a “ settlement ” with his heirs. Of course in practice such a thing would never be done, but the possibility remains.

Matter of Murray, 92 Misc. 100; 155 Supp. 185.

He may direct in his will from what fund the tax is to be paid.

Matter of Smith, 80 Misc. 140; 141 Supp. 798.

2. Transfers Pursuant to Agreement to Make a Will.

a. WHERE THE AGREEMENT IS VIOLATED.

It frequently happens that men agree by valid contract upon consideration to make a will in favor of the beneficiary who performs the services or gives other consideration. It also occurs that the agreement is violated. In such a case the court enforces the agreement and deems the transfer to take place as under the will which should have been made.

This is well illustrated in *Matter of Kidd*, 188 N. Y. 274; 80 N. E. 924. In this case decedent, some years prior to his death, made an ante-nuptial agreement with the woman whom he subsequently married whereby, in consideration of their marriage, and the promise of the woman to turn over to him the sum of \$40,000, to be used in his business, he agreed that he would adopt the daughter of the woman, give her his name and make her his heir. He left a will disposing of an estate of more than \$800,000 but did not leave it to the daughter, as he had agreed. The daughter brought an action setting forth these facts and obtained a judgment which declared that the contract was a valid contract, entitling the plaintiff to all the property, real and personal, of which the deceased died seized or possessed, and directing the executors to execute and deliver to her all the necessary releases and conveyances of said property. Under these circumstances the court held that the transfer was pursuant to will and that the beneficiary of the agreement thus enforced must pay the transfer tax.

The theory upon which such agreements are sustained was stated by Judge Werner in *Phalen v. U. S. Trust Co.* 186 N. Y. 178; 78 N. E. 943 as follows:

“ The principles upon which such agreements are sustained was stated by Lord Camden as early as the year 1769 in *Durfour v. Ferraro* (Hargraves Jurid. Arg., 304), and it was not then new * * * ‘ Though a will is always revokable and the last must always be the testator’s will, yet a man may so bind his assets by agreement that his will shall be a trustee for the performance of the agreement. A covenant to leave so much to his wife or daughter, etc. * * * These cases are common and there is no difference between promising to make a will in such a form and making his will with a promise not to revoke. This Court does not set aside the will but makes the devisee, heir or executor, trustee to perform the contract.’ ”

A will is admissible to probate notwithstanding it indicates some contract obligation of binding force on the testator’s part. For, at all events, one may by his will appoint the executor to administer the estate; and, more than this, the probate of a will as to one’s property merely concludes that the will is valid to pass any estate which the testator had power to devise or bequeath, and not that there was power to devise or bequeath as the will seeks to direct. Controversies of the latter sort are on the other hand to be settled by proper and separate proceedings in law or equity.

Schouler on Wills, Executors and Administrators, 5th ed., § 452-a.

But where a man made a deed to his wife on her promise to devise the property to him and she failed to do so his agreement was enforced by suit. Held not taxable.

Nelson v. Schoonover, 89 Kan. 779; 132 Pac. 1183.

This case would seem against the weight of authority.

b. WHERE THE AGREEMENT IS PERFORMED.

Transfers by will even though pursuant to agreement have always been held taxable. So, where a husband

bought real estate and conveyed the same to his wife by deed, upon her promise to devise the same to him by will, which she did, held,—taxable.

Ransom v. United States, 70 Fed. Cas. No. 11,574.

A more difficult problem arises under mutual wills. These, in the absence of contract, are revokable without notice.

Edson v. Parsons, 85 Hun, 263; 32 Supp. 1036; aff., 155 N. Y. 555; 50 N. E. 265.

Middleworth v. Ordway, 191 N. Y. 404; 84 N. E. 291.

But where there is a contract and that contract provides that the survivor shall have certain rights in the estate of the deceased, and the agreement is upon good consideration, the question has arisen whether the provisions of the mutual wills make the transfer taxable. The authorities are that it does.

In the *Matter of Cory*, 177 App. Div. 781; 164 Supp. 956, two brothers agreed that the survivor might buy certain securities from the estate of the deceased brother at a fixed price and the surviving brother claimed that the assets he thus acquired should be appraised at the price fixed by the will. The court said:

“The result would have been, and in fact was, so far as the State is concerned, that by the contract and will read together John M. Cory received in possession and enjoyment after his brother’s death stock worth upwards of \$100,000. In other words, for the purpose of distribution the testator might put any arbitrary value he chose upon the stock, but for the purpose of assessment for taxation under the Transfer Tax Law, the stock is to be appraised at its real value, and it is unimportant under the Statute that the sale of the stock to John M. Cory at the arbitrary valuation was provided for by an ante-mortem bargain or contract, since the transfer by virtue of that contract was clearly ‘intended to take effect in possession or enjoyment at or after’ the brother’s death.

To apply any other rule to a case like the present would open the door to unlimited devices to avoid the payment of transfer taxes. My conclusion is that the stock in question should be appraised for the purpose of the transfer tax at its fair market value at the time of the testator's death."

In *Matter of Burgheimer*, 91 Misc., 468, 154 Supp. 943, decedent had orally agreed with his partner that on the death of either the survivor should take the decedent's interest in the good will of the firm; and that each should make a will containing this provision. Surrogate Fowler held that the good will was taxable notwithstanding, and remitted the report for determination of the value thereof. He says:

"An agreement between parties as to the devolution of the good will of their business on the death of either does not prove that there was no good will. Nor does it perhaps *bind the State not a party to the undertaking*. * * * Undoubtedly the decedent died owning an interest in the good will and firm name of the co-partners. Consequently the good will formed a part of his estate as an asset. I fail to find a precedent by which the testator through the operation of his last will and testament would be able to reduce to nothingness a substantial asset of his estate and thus escape its proper taxation. I have examined the authorities submitted by the respondent and do not think that they determine a legal finding different from that which I have expressed."

3. Compromise Agreements Between Heirs and Devisees.

The weight of authority holds that when the will is admitted to probate the tax must be paid under its provisions without reference to any subsequent arrangement among the heirs or devisees, as they take by contract and not under the will nor from the testator.

Greenwood v. Holbrook, 111 N. Y. 465; 18 N. E. 711.

In *Matter of Cook*, 187 N. Y. 253; 79 N. E. 991 it was held that legacies to nephews and nieces, assigned by them to testator's widow, for valuable consideration, and in settlement of a contest of the will instituted by her, pass, not under the will, but by virtue of the assignment to the widow who takes as assignee and not as legatee and they were therefore taxable at 5 per cent., not 1 per cent.

As we have already seen, had the nephews and nieces renounced their legacies instead of assigning them and the legacies had then passed to the widow under a residuary clause of the will the result would have been the reverse.

Matter of Wolfe, 89 App. Div. 349; 85 Supp. 949; aff., 179 N. Y. 599; 72 N. E. 1152.

Estate of Stone, 132 Ia. 136; 109 N. W. 455.

So where heirs contested a will which left a large estate to exempt charitable corporations who paid the heirs one-third to withdraw contest the bequests were exempted and the heirs took nothing under the will it being no concern of the state what they received under the compromise agreement.

Matter of Murray, 92 Misc. 100; 155 Supp. 185.

An heir threatened contest because disinherited and a sum was paid her in compromise. It was held taxable against the residuary legatees and not against the disinherited heir. The court said: "The whole of the residuary estate vested at the instant of his death, in the residuary legatees. The inheritance tax was then due and payable. The beneficial interest then passed to the legatees and their succession gave rise to the tax. Subsequent events did not affect it. (*In re Cook*, 187 N. Y. 253; 79 N. E. 991.) The contrary view is held by the Supreme Court of Pennsylvania, but we cannot assent to the reasoning or the conclusion in those cases."

Estate of Graves, 242 Ill. 212; 89 N. E. 978.

Beneficiaries under an earlier will permitted a later will to be probated under a compromise agreement. Held that upon the probate of the will the entire estate vested in the devisees and the amounts received by contestants not being paid pursuant to the will were not subject to tax.

Estate of Wells, 142 Ia. 255; 120 N. W. 713.

A testator devised entire estate to widow. Collateral heirs contested but withdrew contest on payment to them of one-half of the property by the widow. Held that no tax was due from the collateral heirs.

English v. Crenshaw, 120 Tenn. 531; 110 S. W. 210.

Heirs agreed to convey a portion of devised real estate in settlement of a claim of one of them. Held that the tax must be paid on the entire realty.

Estate of Sanford, 90 Neb. 410; 133 N. W. 870.

Where heirs under a compromise agreement changed the distribution as made by the will the tax should be assessed as if the property passed as directed by the will and not as it did under the agreement.

Batt v. Treasurer, 209 Mass. 459; 95 N. E. 854.

In the *Batt* case the court said:

“ It is important that in the assessment of this tax there should be a plain, simple rule. The property upon which the tax is to be assessed is that which passes by will or by the laws regulating intestate succession. When there is a will, whether or not it disposes of the whole estate of the testator, whatever does pass by it passes to the legatees therein named, and by force of the will passes to no other person.

“ In view of the nature and office of the compromise statute, and of the language of the tax statute, the most reasonable interpretation of the phrase ‘ which shall pass by will ’ in the tax statute is that it describes only property that passes by the terms of the will as written and not as

changed by any agreement for compromise made within or without the statute. Any other interpretation would make the amount to be assessed hinge on the manner in which the agreement was to be carried out. In the case before us there can be no doubt if the will had been admitted to probate without a record of the agreement the tax would have been assessed in accordance with the terms of the will, although the agreement as to the division of the estate would have been perfectly valid. For reasons hereinbefore stated the amount of the tax is not changed by the fact that the agreement was approved by the court and made a part of the decree."

Where a testator by his will leaves one-half of his property to his wife and the other half to his sons and daughters, and the estate is all community property, and there is nothing in the will to indicate an intention to make the testamentary gift to the widow stand in lieu of her community interest, she takes three-fourths of the entire community property and is chargeable with inheritance tax on such three-fourths, notwithstanding the filing of a "waiver" of her rights to anything over one-half of the estate. The right of the state to an inheritance tax, based upon three-fourths of the estate, vested upon the death of the testator, and could not be affected by any subsequent arrangement that might be made by the heirs.

Estate of Rossi, 49 Cal. Dec. 60.

The amount passing to legatees under a will and not what they actually receive under a compromise agreement is to be assessed as the "fair market value" of their legacy.

Matter of Stockwell, 158 Supp. 320.

So it was recently held that an amount paid from legacies to secure the withdrawal of a contest of the will was not allowable as a deduction.

Matter of Reed, 98 Misc. 102; 162 Supp. 412.

Where there was a void clause in a will creating a trust the heirs agreed to cure the defect and the property went to the trustees; but the court held that there was in fact an intestacy as to the trust funds and that the tax must be assessed against the beneficiaries who would take under intestacy and not as the property subsequently passed under the agreement.

Matter of Leeds, N. Y. L. J. June 2, 1914.

Money paid under an agreement to compromise an adverse claim to the estate is taxable against the heirs.

Matter of Edwards, 85 Hun, 436, 32 Supp. 901; aff., 146 N. Y. 380; 41 N. E. 89.

The only states which hold a contrary view and permit subsequent arrangements among the heirs to affect the tax are Pennsylvania and Colorado:

Pepper's Estate, 159 Pa. St. 508; 28 A. 353.

Hawley's Estate, 214 Pa. St. 525; 63 A. 1021.

People v. Rice, 40 Colo. 508; 91 Pac. 33.

4. Payment of Debt by Will.

Where the testator recited that his son had rendered him valuable services and devised \$5,000,000 in payment of the same and all subsequent services until his death, held a taxable transfer. The court said: "It matters not what the motive of a transfer by will may be, whether to pay a debt, discharge some moral obligation, or to benefit a relative for whom the testator entertains a strong affection; if the devise or bequest be accepted by the beneficiary, the transfer is made by will, and the state, by the statute in question, makes a tax to impinge upon that performance."

Matter of Gould, 156 N. Y. 423; 51 N. E. 287.

So where a niece agreed to live with her uncle and care for him as long as he should live and he agreed to leave

her all his property by will, and did so; the property passed to her by will and was taxable in spite of the contract, though fully executed on her part.

State v. Mollier, 96 Kan. 514; 152 Pac. 771.

Where bonds of a corporation were canceled by will it was held a taxable transfer to the corporation. The court said: "The debenture bonds in question were the property of the testator. When he bequeathed them to the asylum the property passed from him to it. It might cancel the bonds, and to relieve itself of the obligation they evidenced, or it might, probably, transfer them to any one who would be willing to pay their value.

Re Rothschild, 71 N. J. Eq. 210; 63 A. 615; aff., 72 N. J. Eq. 425; 65 A. 1118.

But when notes of legatees are forgiven by will and are shown to be valueless no tax is assessable.

Matter of Daly, 100 App. Div. 373; 91 Supp. 858; aff., 182 N. Y. 524; 74 N. E. 1116.

Payment of a debt by the exercise of a power of appointment is taxable if the creditors accept it.

Matter of Rogers, 71 App. Div. 461; 75 Supp. 835; aff., 172 N. Y. 617; 64 N. E. 1125.

Matter of Slosson, 87 Misc. 517; 149 Supp. 797; affirmed as to this point 216 N. Y. 79; 110 N. E. 166.

And where the testator agreed to leave all the property to the beneficiary in return for support for life and did so the devise was held taxable.

Carter v. Craig, 77 N. H. 200; 90 A. 598.

5. As Affected by Statute.

The New York statute regulating transfers by will is Article 2 of the Decedents Estate Law, Chapter 18, L. 1909, sections 10 to 47 and is given in full, with index, in the Appendix.

B.— TRANSFERS BY INTESTATE LAW.

In New York these are regulated by Article 3 of the Decedent Estate Law, which appears in full in the Appendix, with index and Consolidator's Notes.

“ The term ‘ intestate laws ’ is intended to cover the statute of descent which relates to the descent of real estate, and the statute of distribution, which provides for the distribution of the surplus of the personal property of decedent, after the payment of his debts and legacies if he left a will, and after setting apart to the widow and minor children the exemptions specified in section 2713.”

Matter of Page, 39 Misc. 220, 79 Supp. 382.

1. As to Real Estate.

A child *en ventre sa mere* is in being for purposes of descent.

Rockwell v. Gregory, 4 Hun, 606.

A will is not revoked by the advent of an after-born child of testator, but the child as heir is put to his or her special statutory action under this section and only the Supreme Court may determine whether or not the action will lie.

Matter of Sauer, 89 Misc. 105, 151 Supp. 465.

Lineal descendants include an illegitimate child whose parents subsequently married.

Miller v. Miller, 91 N. Y. 315.

Where brothers and sisters have a reversionary interest it vests at the death of the intestate and is not affected by the intervening life estate.

Barber v. Brundage, 50 App. Div. 123; 63 Supp. 347; *aff.*, 169 N. Y. 368.

In the absence of statute great uncles succeed to the exclusion of great aunts.

Hunt v. Kingston, 3 Misc. 309; 23 Supp. 352.

Where intestate conveyed to his mother property he had received by descent from his father and she afterwards willed it to him it was held that the land was received on the part of the mother and went to those of her blood.

Adams v. Anderson, 23 Misc. 705; 53 Supp. 141.

Real estate received from the mother goes to cousins on the maternal side to the exclusion of collaterals on the side of the father.

Matter of McMillan, 126 App. Div. 155; 110 Supp. 622.

But where the real estate did not come from either father or mother the collaterals on both sides are entitled to share.

Matter of Peck, 53 Misc. 535; 109 Supp. 1083.

2. As to Personal Property.

Lineal consanguinity is reckoned by counting each step, up or down, from the deceased; collateral consanguinity by counting the steps from the intestate to the common ancestor, then down to the collateral beneficiary.

Matter of Marsh, 5 Misc. 428; 26 Supp. 718.

Three nephews and the child of a deceased nephew share equally, each one-fourth.

Matter of Prote, 54 Misc. 495; 104 Supp. 301.

In all such cases the nephews and nieces and the children of deceased nephews and nieces take per stirpes.

Matter of Fleming, 48 Misc. 589; 98 Supp. 306.

Matter of Dunning, 48 Misc. 482; 96 Supp. 1110.

And generally, where there are unequal degrees the beneficiaries take per stirpes.

Dwight v. Gibb, 150 App. Div. 573; 135 Supp. 431.

Brothers and sisters and their lineal descendants to the most remote degree are preferred to other kindred not in

closer blood relationship; so held preferring great grand-nieces over first cousins.

Matter of Butterfield, 161 App. Div. 506; 146 Supp. 671.

Prior to 1898 Subd. 12 of Sec. 2732 of the Code, now Sec. 98 of the Decedent's Estate Law, read:

"No representation shall be admitted among collaterals after brothers' and sisters' children."

In 1898 said subdivision was amended to read: "Representation shall be admitted among collaterals in the same manner as allowed by law in reference to real estate."

Where an intestate is survived by nephews and nieces and by grandnephews who are children of a deceased nephew and niece, all of such persons having sprung from the intestate's deceased brother, the grandnephews are entitled to receive their parent's share of the personal estate.

Matter of Ebbets, 43 Misc. 575, 89 Supp. 544.

Matter of McGovern, N. Y. Law Journal, March 26, 1903, distinguishing *Matter of Davenport*, 172 N. Y. 454.

Matter of Hadley, 43 Misc. 579, 89 Supp. 545.

Matter of Kearney, N. Y. Law Journal, May 4, 1905.

Subd. 12 of Sec. 98 was further amended by chapter 539 of the Laws of 1905, to read:

"No representation shall be admitted among collaterals after brothers' and sisters, descendants. This act shall not apply to an estate of a decedent who shall have died prior to the time this act shall take effect." And it now reads: "Prior to May 18, 1905."

In the *Matter of Nichols*, 60 Misc. 299, 113 N. Y. Supp. 277, the court says:

"Under this subdivision, the descendants of brothers and sisters to the remotest degree by representation share in the distribution of an estate. All collateral relatives, except descendants of brothers and sisters, are precluded from sharing in the decedent's estate by repre-

sentation. Where they are all of the same degree of kinship, to wit, uncles and aunts, and nephews and nieces, the rule of representation does not apply, still they take by reason of that degree.

“ In the case at bar, the uncles and aunt are of the third degree of kinship, while all of the cousins are of the fourth degree. It therefore follows that the cousins are precluded by reason of their degree of kinship, and by reason of the prohibition found in said subdivision 12, from sharing in the distribution of this estate.

Matter of Davenport, 172 N. Y. 454.

“ Subdivision 10 of section 2732 provides that, ‘ Where the descendants, or next of kin of the deceased, entitled to share in this estate, are all in equal degree to the deceased, their shares shall be equal.’ ”

Following this it was held in the *Matter of Barry*, 62 Misc. 456, that where an intestate leaves no nearer kin than cousins and descendants of deceased cousins, the cousins take under subdivision 12, Sec. 98, to the exclusion of the descendants of deceased cousins.

So, where a married woman dies without husband, brother, sister, ancestor or descendant but leaves a nephew and niece, the only children of a previously deceased brother, and no other children or descendants of brothers or sisters, and also two uncles and two aunts and many children and descendants of deceased uncles and aunts, her personal property is to be divided between the nephew and niece and the surviving uncles and aunts, all of whom are of equal degree of consanguinity to the decedent, and as the uncles and aunts of the decedent would not be heirs in case the property were real estate, the children and descendants of the deceased uncles and aunts are not entitled to take.

Matter of Davenport, 67 App. Div. 191, 73 Supp. 653; aff., 172 N. Y. 454.

The provisions of subd. 3 have not been affected or impaired by the provisions subd. 12, declaring that representation shall be admitted among collaterals in the same manner as allowed by law in reference to real estate.

Matter of Hardin, 44 Misc. 441, 90 Supp. 95.

Nephews and grand nephews take per stirpes.

Matter of De Voe, 107 App. Div. 245; 94 Supp. 1129.

Where the surviving next of kin are first cousins and the children of deceased first cousins, under subd. 12, the first cousins are entitled to the personal estate to the exclusion of such children.

Adee v. Campbell, 79 N. Y. 52.

Second cousins, though they are not next of kin of decedent, are entitled to letters of administration.

Matter of Blake, 60 Misc. 627; 113 Supp. 944.

3. Advancements.

The statute providing that advancements shall be deducted from the share of the beneficiary applies only in case of intestacy.

Messman v. Egenberger, 46 App. Div. 46; 61 Supp. 556.

Matter of Turfler, 1 Misc. 58, 23 Supp. 135.

Burnham v. Comfort, 37 Hun, 216; aff. 108 N. Y. 535.

Thompson v. Carmichael, 3 Sandf. 120.

Kent v. Hopkins, 86 Hun, 611; 33 Supp. 767.

Camp v. Camp, 18 Hun, 217.

Where the intent is clear a gift by a father to one of his children will not be construed as an advancement.

Matter of Accounting of Morgan, 104 N. Y. 74.

Expenditures for support and education will not be deemed advancements as it is the legal duty of a father to support and educate his children.

Vail v. Vail, 10 Barb. 69.

It is not necessary to show that the advancement is made in full of the heir's share in both real and personal estate; it is sufficient to show that the advancement was in full of his share in the land of his father, leaving him to share with the other children in the personal estate.

Palmer v. Culbertson, 143 N. Y. 213.

It is necessary to prove not only the making by the intestate of the conveyance by way of advancement, but also that such advancement was equal or superior to the amount of the share which each child would be entitled to receive; and the burden of such proof is upon those disputing the claim of such child.

Bell v. Champlain, 64 Barb. 396.

4. Resume of the Intestate Laws of the Several States.

The intestate law of the state of domicile controls the devolution of personal property; and even though the personal property of a non-resident is taxed because it is physically present within the jurisdiction the tax must be imposed in accordance with the devolution as fixed by the foreign law.

Blackstone v. Miller, 188 U. S. 189; 23 S. Ct. Rep. 277.

People v. Griffith, 245 Ill. 532; 92 N. E. 313.

The decedents estate laws of the several states vary considerably in detail and an extended review of their provisions is not within the scope of this work. The following brief summary of the statutes of descent of the several states may be found of some assistance; though they are so frequently amended the information should always be verified.

a. RIGHTS OF A SURVIVING HUSBAND.

If the widow survives her husband her rights are the same as his except as follows:

The surviving husband takes the entire personal estate whether there is issue of the marriage or not in Delaware, District of Columbia, North Carolina, Rhode Island and Virginia.

In New York he takes the entire personalty if there is no issue.

The surviving husband takes the entire estate if there is no issue and the same share as each child in Florida, Georgia and Pennsylvania. In Ohio he takes the entire estate if there is no issue, if there be issue they take it.

In all other cases the rights of the surviving spouse are the same.

b. WHEN THERE IS NO HUSBAND, WIDOW, CHILDREN OR DESCENDANTS.

The parents take the entire estate in equal shares in Alabama, Arizona, California, Colorado, Connecticut, Idaho, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Montana, Minnesota, Nebraska, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, Texas, Utah, Vermont, Washington, Wisconsin and Wyoming.

If one parent is dead the other takes the whole in these states except Alabama, Arizona, Maine, and Texas, where the brothers and sisters or their descendants take half and the surviving parent the other half.

In these states the father takes all, if dead, the mother, brothers and sisters or their descendants equally: Florida New York, Oregon, Rhode Island, South Dakota, Tennessee, Virginia and West Virginia.

In these states, the parents, if living, share equally with the descendants: Georgia, Illinois, Mississippi, Missouri, New Jersey and South Carolina.

In these states the father takes all, if dead the mother takes all, if both are dead then to the brothers and sisters

equally: Arkansas, District of Columbia and North Dakota.

In these states the brothers and sisters and their descendants take all and the parents only inherit in case there are none: Delaware, Ohio, Maryland.

c. WHERE BOTH THE PARENTS ARE DEAD LEAVING ISSUE.

The children take all to the exclusion of all other relatives equally, if all are living, if one or more are dead leaving issue the issue take parent's share per stirpes. And the rule per stirpes follows unless all surviving issue are of equal degree. This is the rule in all the states.

d. WHERE A WIDOW AND ISSUE OR DESCENDANTS SURVIVE.

When the deceased leaves a widow and children, or descendants, the widow takes one-third and the children share equally in the residue in the following states: Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Ohio, (one-half if less than \$400) Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, Virginia and West Virginia.

In the following states, if there be but one child the widow takes one-half and the child one-half; if two or more children or their descendants, the widow takes one-third, as above, and the children or their descendants the residue: California, Florida, Idaho, Michigan, Montana, Nevada, North Dakota, Oklahoma, South Dakota, and Utah.

In the following states the widow takes one-half and the children, or descendants, the residue: Colorado, Kansas, Kentucky, Oregon, Washington, and Wyoming.

In the following states the widow takes the same share as each of the children: Mississippi, Missouri, Tennessee and Wisconsin.

In North Carolina, if there are less than three children, the widow takes one-third and the children the residue; if there are three or more children, the widow takes the same share as each of the children.

In Alabama, if there is but one child, the widow takes one-half and the child one-half; if there are more than one child and less than five children, the widow takes the same share as each of the children; if there are five or more children, the widow takes one-fifth and the children or their descendants share equally in the residue.

In Georgia, if there are less than five children, the widow takes the same share as each of the children; if there are five or more children, the widow takes one-fifth and the children or their descendants share equally in the residue.

In Nebraska, if widow is not the parent of all the children of the deceased and there be more than one child, widow takes one-fourth and the children the residue. If widow is parent of all children of the deceased, she takes one-half if there be but one child and the child the residue; if there be more than one child the widow takes one-third and the children the residue.

In New Mexico, the widow takes one-half of the estate acquired during marriage, otherwise than by gift and the children or their descendants share equally in the residue; the widow also takes one-fourth of the estate acquired before marriage, or by gift or legacy during marriage, the children or their descendants taking the residue.

e. IF THERE IS A WIDOW OR HUSBAND BUT NO CHILDREN OR DESCENDANTS.

The rights are the same, except as before stated as to the husband.

The surviving spouse takes all in Alabama, Arizona, Colorado, Florida, Georgia, Illinois, Kansas, Minnesota,

Mississippi, New Jersey, New Mexico, Ohio, Oregon, Tennessee, Texas, Washington, West Virginia and Wisconsin.

In the following states the surviving spouse takes one-half, the residue being taken by the other relatives in the manner and proportion in which they take the whole estate when the deceased leaves neither widow nor descendants: Arkansas, California, Delaware, District of Columbia, Idaho, Iowa, Kentucky, Maine, Maryland, Missouri, Montana, Nebraska, Nevada, North Carolina, Oklahoma, Rhode Island, Texas, Washington, West Virginia and Wisconsin.

In Massachusetts, North Dakota, Pennsylvania and Utah the husband or widow takes the entire estate up to \$5,000 and one-half of the residue.

In Connecticut the husband or widow takes the entire estate up to \$2,000 and one half of the residue.

In New York, if there be a father or mother of deceased surviving, the widow takes one half; if there be no father or mother, but a brother or sister, nephew or niece surviving, the widow takes \$2,000 and one-half residue; if there be no parent, brother, sister, nephew or niece, the widow takes all. The residue after the widow's share passes in each case in accordance with the provisions applying where no widow or issue survive. The husband takes all by common law right.

In New Hampshire the widow takes \$1,500 and, if the estate exceeds \$3,000 one-half of the residue.

In Wyoming the widow takes the entire estate up to \$20,000 and three-fourths of the residue (if brother, sister or parent survive, otherwise all to widow).

In Michigan the widow takes the entire estate up to \$3,000 and one-half of the residue (if brother, sister or parent survive, otherwise all to widow).

In Vermont the widow takes entire estate if not

exceeding \$2,500 if more than \$2,500 widow takes that sum and one-half residue.

For authorities interpreting the New York statute of distribution see:

Matter of Page, 39 Misc. 220; 79 Supp. 382.

Matter of Ebbetts, 43 Misc. 575; 89 Supp. 544.

Matter of Hadley, 43 Misc. 579; 89 Supp. 545.

Matter of Nichols, 60 Misc. 299; 113 Supp. 277.

Matter of Barry, 62 Misc. 456; 116 Supp. 798.

Matter of Davenport, 172 N. Y. 454; 65 N. E. 275.

Matter of Clowes, 163 App. Div. 961; 148 Supp. 386.

See New York Decedents' Estate Law, Appendix.

C.— GIFTS.

Gifts, in inheritance tax law, are divided into four classes: 1. Gifts *inter vivos*; 2. Gifts *causa mortis*; 3. Gifts in contemplation of death; 4. Gifts to take effect in possession or enjoyment at or after death. Gifts *inter vivos* are not taxable transfers, the rest are.

1. Gifts Inter Vivos.

Completed gifts *inter vivos* are not subject to transfer tax. To establish that the alleged gift is not a part of decedent's estate the evidence must show donor's intent to give, delivery of the thing given and acceptance by on behalf of the donee.

Beaver v. Beaver, 117 N. Y. 421; 22 N. E. 940.

Matter of Bolin, 136 N. Y. 177; 32 N. E. 626.

a. BURDEN OF PROOF IS ON THE DONEE.

The court said in *Matter of O'Connell*, 33 App. Div., 483: "He who attempts to establish title to property through a gift *inter vivos* as against an estate of a decedent takes upon himself a heavy burden which he must support by evidence of great probative force, which clearly establishes every element of a valid gift, viz., that the decedent intended to divest himself of the title in

favor of the donee and accompanied his intent by a delivery of the subject matter of the gift.”

To the same effect are:

Matter of Perry, 129 App. Div. 587; 114 Supp. 246.

Doty v. Wilson, 47 N. Y. 580.

Beaver v. Beaver, 117 N. Y. 421; 22 N. E. 940.

Lehr v. Jones, 74 App. Div. 54; 77 Supp. 213.

Hemmerich v. Union Dime S. I., 205 N. Y. 366; 98 N. E. 499.

b. THERE MUST BE A PRESENT INTENT TO GIVE.

It is axiomatic that the gift must be in *praesenti* and not in *futuro*. A mere promise of a gift in the future does not constitute a good gift *inter vivos*.

“ If the gift regards the future it is but a promise without consideration and has no validity.”

Parsons on Contracts, 5th ed. 15, Sec. 1.

This principle is well illustrated in the case of *Holmes v. Roper*, 141 N. Y. 64; 36 N. E. 180. In this case a note was given without consideration. This note was handed and delivered by the deceased to his brother and after his death the brother sued the executor but was unsuccessful, for the court held that the note was a mere executory promise in the future and therefore was not good as a gift either *causa mortis* or *inter vivos*.

This principle was applied to a subscription to the building fund of a church: *Twenty-third Street Baptist Church v. Cornell*, 117 N. Y. 601, where the court said: “ The promise died when she died, and was merely a good intention which did not survive her.”

Words which necessarily refer to the future cannot be construed to effectuate a present gift.

Matter of Brown, 86 Misc. 187; 149 Supp. 138; aff. 167 App. Div. 912.

Matter of Somerville's Estate, 20 Supp. 76.

c. THERE MUST BE DELIVERY OF THE THING GIVEN.

“The necessity of delivery has been maintained in every period of the English Law.”

Kent's Commentaries, vol. 2, p. 348.

The principle was applied in *Harris v. Clark*, 3 N. Y. 93. The decedent gave a draft for \$30,000 to his sister upon R. Clark & Co., who had more than sufficient funds to meet it. The deceased had formerly been a partner of the concern, and it was amply solvent. But he died before his sister could present this draft to them for their acceptance. The court held that as there was no acceptance of the draft it was a mere promise to pay in case they did not pay, made without consideration and revoked by his death; also, as an order on R. Clark & Co. that it was revoked by his death.

The rule has been followed in these cases:

Matter of King, 51 Misc. 375, 381; 101 Supp. 279.

Gegan v. Union Trust Co., 198 N. Y. 541; 92 N. E. 1085.

Matter of Crawford, 113 N. Y. 366; 21 N. E. 142.

In a box kept by decedent at his bank marked with his name and that of his sister-in-law there were unrecorded deeds from him to the sister-in-law, and also executed assignments of certain stock and a mortgage, and certificates of deposit endorsed on the back by him to the order of another sister-in-law. The several documents were in envelopes on which the decedent had written “the property of ” with the name of the person: Held, no delivery and taxable as part of decedent's estate.

Matter of Sharer, 36 Misc. 502; 73 Supp. 1057.

d. DELIVERY TO AN AGENT.

The rule seems to be: That a delivery to an agent or trustee of a donee is good; but that a delivery to an agent or servant of the donor is not and cannot be good delivery to the donee for the reason that the donor may

countermand the gift at any time prior to the delivery by his agent to the beneficiary.

1. *To Agent of Donor.*

A delivery to the agent of the donor to be delivered to a third person is not a good delivery. This rule is as old as the common law. In *Lyte et Ux v. Peny*, Easter Term, 33 Hen., VIII, a man gave money to third person to be delivered to a woman on the day of her marriage. The question was whether before her marriage he could countermand and revoke the gift. It was held that he could do so, the court reasoning: "For if a man delivers to his servant on New Year's Day a golden cup to give as a New Year's gift to a stranger, clearly he may countermand this, notwithstanding the gift, for it was not a gift perfectly executed."

So where a decedent had given an order on a bank to transfer her account to the joint names of herself and her husband and died before the order was executed; held, no gift.

Augsbury v. Shurtliff, 180 N. Y. 138; 72 N. E. 927.

The same rule is laid down in *Sessions v. Moseley*, 4 Cush. (Mass.), 87, at page 92: "If, therefore, it be delivered to a third person with authority to deliver it to the donee, this depository, until the authority is executed by actual delivery to and acceptance by the donee, is the agent of the donor, who may revoke the authority and take back the gift, and therefore if the delivery does not take place in the donor's lifetime, the authority is revoked by his death; the property does not pass but remains in the donor and goes to his executor or administrator."

This rule was followed in:

Clapper v. Frederick, 199 Pa. St. 609; 49 A. 218.

Wadd v. Hazleton, 137 N. Y. 215; 33 N. E. 143.

Matter of Loewi, 75 Misc. 57; 134 Supp. 679.

The delivery to the agent must be accompanied by the intent to give. If he holds as bailee his possession is not such as to complete delivery.

Matter of Palmer, 117 App. Div. 360; 102 Supp. 236.

Matter of Bolin, 136 N. Y. 177; 32 N. E. 626.

In the *Bolin case*, Julia Cody, the decedent, deposited money in the savings bank, "Julia Cody or daughter, Bridget Bolin." Before Mrs. Cody died and during her last illness all of her property, including the savings bank pass book, came into the possession of her daughter. The court says at page 179: "Nor was the custody of the passbook by the daughter such a possession as evinced an intention to transfer the ownership of the moneys deposited to the daughter." In other words, the daughter's possession was as bailee for her mother, and could not inure to her benefit as the recipient of a gift.

2. *To Agent of the Donee.*

When, however, the third person is held to be the agent of the donee, the delivery is complete.

In *Matter of Mills*, 172 App. Div. 530; 158 Supp. 1100; aff. 219 N. Y. 100, the decedent, Darius O. Mills was ill in California. All his securities were in possession of his son, Ogden Mills, in a safe deposit box in New York. The decedent wrote to his son that he wished to give \$1,000,000 each to him and to his sister Mrs. Whitelaw Reid as a Christmas present in Atchison stock, and directed his book-keeper to make entries in his books to that effect. It was held that, as the son was already in possession, delivery would be "an idle ceremony," and that the son was the agent of his sister and therefore the delivery to her was also complete.

e. SYMBOLICAL DELIVERY.

Symbolical delivery has been held sufficient in these cases:

By a key to a safe deposit box:

Gilkinson v. Third Ave. Railroad Co., 47 App. Div. 472; 63 Supp. 792.

By a savings bank book:

McGuire v. Murphy, 107 App. Div. 104; 94 Supp. 1005.

By written memorandum:

Champney v. Blanchard, 39 N. Y. 11.

f. RE-DELIVERY BY DONEE TO DONOR.

The gift may be redelivered by the donee to the donor to hold as agent.

Gannon v. McGuire, 160 N. Y. 476; 55 N. E. 7.

But if the delivery and re-delivery are so connected as to amount to one transaction and the donor thereafter retains full power of control and the income for his own benefit there has been no transfer of title and hence no gift.

Matter of Brandreth, 169 N. Y. 437; 62 N. E. 563.

If on the other hand, the title has passed and the donor holds the property as agent for and acts in good faith on behalf of the donee and not for himself the fact that he does so is not evidence that no gift was intended or took place.

Matter of Hendericks, 163 App. Div. 413; 148 Supp. 511; aff., 214 N. Y. 663.

In the *Hendricks* case the court said: "The learned surrogate, as appears from his opinion, reached the conclusion which he did by reason of the fact that the control which this deceased could exercise over the stocks was greater than that reserved to the donor in *Matter*

of *Brandeth* (169 N. Y. 437) and *Matter of Cornell* (170 id. 423). But it is the source and not the extent of the control which is important. In each of these cases the donor, at the time of making the gifts, reserved to himself the income of the property during his life. To that extent the gifts were conditional. Here the transfers of the certificates did not have attached to them any condition or reservation whatever. The source of the donor's control was an agreement subsequent to the gifts and not a condition attached to them. The stocks in question did not belong to the deceased at the time of his death, they are not a part of his estate, and, therefore, not subject to a tax. A conclusion to the contrary would be without evidence to support it."

So, where a husband endorsed over to his wife five notes and thereafter, by a separate instrument she gave him the proceeds thereof during life Surrogate Cohalan held that, under the decision in the *Matter of Hendricks* the title passed and that no transfer took place at death. This would seem to afford an opening for avoiding the rule that a gift reserving a life use is taxable as a transfer to take place at death.

Matter of Cahen, N. Y. L. J. Aug. 6, 1915.

g. POWER OF REVOCATION.

It must not be an "Indian Gift." The donor must part with all control or power or revocation.

Re Douglas County, 84 Neb. 506; 121 N. W. 593.

Matter of Green, 153 N. Y. 223; 47 N. E. 292.

Matter of Brandreth, 169 N. Y. 437; 62 N. E. 563.

Matter of Cornell, 170 N. Y. 423; 63 N. E. 445.

State v. Bullen, 143 Wis. 512; 128 N. W. 109.

The courts have made an apparent exception in the matter of bank accounts taken in trust for another.

A deposit by one person of his own money, in his own name as trustee for another, standing alone, does not

establish an irrevocable trust, during the lifetime of the depositor. It is a tentative trust, merely revocable at will, until the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration, such as delivery of the pass-book or notice to the beneficiary. In case the depositor dies before the beneficiary without revocation or some decisive act or declaration of disaffirmance, the presumption arises that an absolute trust was created as to the balance on hand at the death of the depositor.

Matter of Totten, 179 N. Y. 112; 71 N. E. 748.

Matthews v. Brooklyn Sav. Bk., 208 N. Y. 508; 102 N. E. 520.

But where the beneficiary dies before the depositor the trust is terminated and no title passes.

Matter of U. S. Trust Co., 117 App. Div. 178; 102 Supp. 271; aff., 189 N. Y. 500; 81 N. E. 1177.

Matter of Duffy, 127 App. Div. 74; 111 Supp. 77.

Where one deposits money in a bank in his own name in trust for his sister, who had no knowledge that such an account was opened and who died before the depositor, he exercising sole dominion over the account and drawing the interest thereon before and after her death, there is no presumption that a trust was created in favor of the sister or her estate, although the depositor died without changing the account. On the contrary the presumption arises that the account was so kept for ulterior motives.

Garvey v. Clifford, 114 App. Div. 193; 99 Supp. 555.

and such a deposit is subject to the right of creditors after death of depositor.

Beakes Dairy Co. v. Berns, 128 App. Div. 137; 112 Supp. 529.

But it is held that such deposits constitute a gift to take effect at death and are, therefore, taxable.

Matter of Palm, 148 Supp. 1044.

Matter of Halligan, 82 Misc. 30, 143 Supp. 676.

Matter of Crusius, N. Y. L. J., Feb. 26, 1914.

Where, however, the beneficiary of the trust has notice of the gift before the death of the donor, the transfer of title is held complete and an irrevocable trust established, so that no tax is imposed.

Matter of Brennan, 92 Misc. 423; 157 Supp. 141.

Matter of Rudolph, 92 Misc. 347, 156 Supp. 825.

As a general rule where there is a power to revoke no gift is consummated and the property remains that of the donor, passing at his death and subject to tax.

In *Matter of Dana*, 215 N. Y. 461; 109 N. E. 557, the court said: "The trust instrument was essentially testamentary in character. It reserved to the donor the income from the stock during his lifetime; the right to direct how the trustee should vote thereon; the power to cause the trustee to sell the stock in such manner and at such price as the donor might direct; the right to substitute a different trustee at will; and the absolute right of revocation at any time during the lifetime of the donor. In fact, after the execution of the deed of trust Mr. Dana still retained just as much power over the stock as he would have had if he had disposed of it by will instead of executing the instrument which he delivered to Mr. Seibert. There was no element of finality about the instrument during the donor's lifetime, for it was just as capable of revocation as a will would have been."

See *post*, p. 87.

h. STOCK TRANSFER STAMPS.

Under the New York tax on transfers of stock the statute requires the stamps to be affixed at the time of the transfer. In case of failure to do so no evidence of the gift can be received in any court, under the statute. If no stock transfer stamps were affixed by donor of stock at the time of the gift and objection to evidence of an

alleged gift is made on that ground before the appraiser it must be stricken out.

Matter of Ball, 161 App. Div. 79; 146 Supp. 499.

Matter of Church, N. Y. L. J., June 5, 1916; aff., 176 App. Div. 910.

But it is too late to take the objection on appeal to the surrogate or to move to strike out the evidence admitted by the appraiser when the point was not raised before him.

Matter of Cleveland, 171 App. Div. 908; 155 Supp. 1098.

Matter of Mills, 172 App. Div. 530; 158 Supp. 1100; aff., 219 N. Y. 100.

i. CONSIDERATION.

If the donee gives consideration of course it is not a gift but a *contract*, and if the title passes and the transaction is completed *inter vivos* no tax is imposed.

Matter of Thorne, 44 App. Div. 8; 60 Supp. 419.

Matter of Hess, 110 App. Div. 476; 96 Supp. 990; aff., 187 N. Y. 554; 80 N. E. 1111.

Matter of Edgerton, 35 App. Div. 125; 54 Supp. 700; aff., 158 N. Y. 671; 52 N. E. 1124.

See *post* p. 92.

2. Gifts *Causa Mortis*.

A gift *causa mortis* is revocable at any time by the donor and becomes void if the donee dies first. It is therefore not only in contemplation of death but title to the property is subject to be defeated by donor's revocation.

Ridden v. Thrall, 125 N. Y. 572; 26 N. E. 627.

In the early cases in New York it was substantially held that there was no distinction between gifts *causa mortis* and gifts in "contemplation of death."

Matter of Spaulding, 49 App. Div. 541; 63 Supp. 694; aff., 163 N. Y. 607; 57 N. E. 1124.

But this view is held too narrow by the courts of other states.

Estate of Reynolds, 169 Cal. 600; 147 Pac. 268.

See however as to rule in California.

Spreckles' Estate, 30 Cal. App. 363; 158 Pac. 549.

See also California Statute of 1917, Appendix.

It is no longer entertained by the courts of New York.

Matter of Dee, 148 Supp. 423; aff., 161 App. Div. 881; 145 Supp. 1120; aff., 210 N. Y. 625.

It is now universally held that though such gifts are not *causa mortis* and are complete *inter vivos* yet they are taxable if clearly made "in contemplation of death."

Merrifield v. People, 212 Ill. 400; 72 N. E. 446.

State v. Pabst, 139 Wis. 561; 121 N. W. 351.

3. Gifts in Contemplation of Death.

a. NATURE OF THE "CONTEMPLATION."

It is not the general knowledge of all men that they must "die sometime;" or, as Lord Mansfield put it, that "we all have in us the seeds of mortality."

Facts or circumstances must be adduced to show some existing condition of mind or body from which an apprehension of death might arise.

Matter of Spaulding, 49 App. Div. 541; 63 Supp. 694; aff., 163 N. Y. 607; 57 N. E. 1124.

It is therefore a question of fact and must depend upon the circumstances of each particular case.

People v. Kelly, 218 Ill. 509; 75 N. E. 1038.

Matter of Mahlstedt, 67 App. Div. 176; 73 Supp. 818.

and the burden of proof is on the state.

State v. Thompson, 154 Wis. 320; 142 N. W. 647.

But "To prove that property is transferred in contemplation of death is exceedingly difficult, as the only

parties whose intimacy with a decedent would afford them an opportunity of being cognizant of his intentions are usually those whose interests would be served by testimony to the effect that the gift was not made in contemplation of death and the State is, therefore, compelled to rely upon conclusions derived from the testimony of witnesses who are interested in disproving its contention. It is also in large measure the attempted proof of the operations of a man's mind."

Matter of Price, 62 Misc. 149-152; 116 Supp. 283.

So when it appears that the deceased had had two paralytic strokes the court is bound to presume that a gift has been made in view to death.

Williams v. Guile, 117 N. Y. 343, 349; 22 N. E. 1071.

And the fact that the donor, a physician, was seen making a stethoscopic examination of his own chest at about the time of the gift and the next day died suddenly was held sufficient, with the surrounding circumstances to show the "contemplation" required by the law.

Matter of Dee, 161 App. Div. 881; 145 Supp. 1120; aff., 210 N. Y. 625.

See also *Matter of Rundell*, decided by the Appellate Division, Fourth Department, July, 1917, and not yet reported.

A gift of property made by the donor for the purpose of so reducing his estate that a step-son would not get it from his mother, when the donor was suffering with Bright's disease, was held a gift in contemplation of death.

Re Estate of Benton, 234 Ill. 366; 84 N. E. 1026.

The legal contemplation required has been thus defined in a well considered case in Wisconsin:

"It is manifest the words were intended to cover transfers by parties who were prompted to make them by reason of the expectation of death, and which, in view

of that event, accomplish transfers of the property of decedents in the nature of a testamentary disposition. It is therefore obvious that they are not used as referring to that expectation of death generally entertained by every person. The words are evidently intended to refer to an expectation which arises from such a bodily or mental condition as prompts persons to dispose of their property and bestow it upon those whom they regard as entitled to their bounty. This accords with the general objects and purposes of the law, namely, the imposition of a tax upon the devolution of property involved in the demise of the owner.

State v. Pabst, 139 Wis. 561, 590; 121 N. W. 351.

The adequacy of the consideration must be considered as a fact bearing on the "contemplation."

Abstract and Title Guarantee Co. v. State (Cal.), 141 Pac. 264.

The Illinois court took a similar view:

"A gift is made in contemplation of an event when it is made in expectation of that event and having it in view; and a gift made when the donor is looking forward to his death as impending, and in view of the event is within the language of the statute. * * * The preparation of the will, under the circumstances and in view of the rapid progress of the disease, is strong evidence that death was expected and no other moving cause than the expectation of death is apparent. While the widow and the physician testified that the deceased did not expect to die they also said that it was not the subject of conversation at all, and in view of his condition it is a fair inference that he was not so dull of comprehension as to suppose he would get well."

Rosenthal v. People, 211 Ill. 306; 71 N. E. 1121.

In a California case when the decedent was suffering from a mortal disease at the time of the gift the court

said: "Coming then to the testimony in the case, we have already spoken of the physical condition of the deceased and of his knowledge of the character of his ailment. The transfers to his wife were admittedly gifts, pure and simple. They were made prior to and following an operation 'considered absolutely necessary to save his life.' Mrs. Reynolds speaks of the transfers to her as gifts and says that they were made under Mr. Reynolds' promise to make provision for her. After his death she filed her election to take these gifts instead of the benefits under the will. All this was done under the agreement that she had had with Mr. Reynolds, that the property given to her was in lieu of all rights and claims which she might have against his estate. It would seem to be clear beyond peradventure that as to these transfers, they were made in that contemplation of death which the law designates, and that they were gifts in life substituted for gifts by will."

Estate of Reynolds, 169 Cal. 600; 147 Pac. 268.

All the cases agree that contemplation of death must be the impelling motive without which the transfer would not have been made.

People v. Burkhalter, 247 Ill. 600; 93 N. E. 379.

b. ADVANCED AGE ALONE INSUFFICIENT.

Merely that the deceased had reached an advanced age is not sufficient evidence that the gift was made in contemplation of death. So it was held when there were several large gifts to a child by an aged parent, sound in body and mind, they could not be subjected to the tax merely because the donor had reached an unusually advanced age. The court said: "The gifts were a perfectly natural disposition of his estate and were equally as consistent with a desire to see his daughter and family enjoy the fruits of his accumulation and to observe the use they made thereof during his lifetime."

The burden is on the public officials to show that gifts were made in contemplation of death. A gift by a father eighty-six years old in good health was not made in contemplation of death in *In re Dessert's Estate* (Wis.), 142 N. W. 647.

State v. Thompson, 154 Wis. 320; 142 N. W. 647.

The California Court has recently gone a step further in the *Matter of Spreckles*, 30 Cal. App. 363; 158 Pac. 549, where Mrs. Spreckles, the widow of the "Sugar King" put her millions into a trust and gave the stock to her children when at the age of 79 and suffering from a dangerous heart disease. She died within a month after the gifts. The court acknowledged that it was a close case but sustained the decision of the trial court whereby the estate escaped taxation on the theory that though the decision might be against the weight of evidence there was some testimony to support it and therefore it could not be disturbed. But the reasoning of the court practically confines such gifts to gifts *causa mortis* though former cases in that state, as we have seen, have repudiated that rule. In reviewing the testimony the court said:

"In support of appellant's position it is pointed out that Mrs. Spreckles, at the time of the execution of the transfer was a woman of venerable years, at best not far removed from the natural end of her life; that for many years prior to and up to the time of the transfer she had been a chronic sufferer from a serious and dangerous heart trouble which was of a nature that from it her death might suddenly occur at any moment, a condition of which she undoubtedly possessed a keen realization; that, as a matter of fact, her death occurred within a few weeks after she made the transfer."

Conceding that this testimony would bring the case within the statute the court recapitulates the testimony produced by the estate as follows:

“ Shortly after her husband’s death in 1908, Mrs. Spreckles expressed her intention of forming a corporation for the avowed object of transferring her property thereto. She had often declared her intention of giving her property to the plaintiffs, and to Mr. Rudolph Spreckles, stated her wish that her children, the plaintiffs, should own and enjoy the property in her lifetime. These ideas seemed at all times and prior to the date of the transfers to have constituted the central thoughts of her mind until their crystalization by the organization of the investment company, the immediate transfer of the greater part of her estate thereto, and thereupon the transfer of the stock therein to the plaintiffs. Under the circumstances it was, without any thought of her own death or without any view to preparation therefor, a most natural thing to do. At her then advanced age, having other means far more than necessary for her own maintenance for the remainder of her life, she doubtless believed that she would in her declining days be happiest if relieved of the heavy burden and serious responsibilities which necessarily go with the control and management of vast and varied property interests such as she was the owner and possessor of and that in obtaining release from their burdens her happiness would be the more certainly assured by transferring her property to her children so that they might own and enjoy it during her lifetime. While she was afflicted with a serious heart affection and had suffered intermittent spells of illness that temporarily confined her to her bed, it is evident that she did not, at any time prior to the date of the transfers, harbor the thought that her life was in immediate peril from her malady, or that she would not live for many years to come.”

In support of this last assertion the court cites the fact that the deceased was repairing her residence at much expense and talked of going to Europe. Under the court’s

theory nothing short of proving that the deceased made the transfers on her death bed would have made the gift of all her property one in contemplation of death.

[See California Statute of 1917 — Appendix.]

In the *Matter of Mills*, 172 App. Div. 530; 158 Supp. 1100; aff. 219 N. Y. 100, the donor was 84 years old and in failing health, unable to write, and barely able to sign his name, but gifts of \$2,000,000 to his children were sustained as not taxable though he died ten days later.

This rule has proved so unsatisfactory that Surrogate Cohalan of New York County has promulgated another doctrine which would go far to solving a problem that has provoked drastic legislation of doubtful constitutionality. In *Matter of Dunne*, N. Y. Law Journal, May 25, 1914, he stated the doctrine as follows:

“ When a person reaches the age of 80 years and makes a gift of a substantial part of his property, the presumption is that the gift is made because the donor realizes that in the ordinary course of nature he cannot survive much longer and wishes to anticipate the effect of a will or the intestate laws by giving his property to those persons who would be legatees under a will or beneficiaries under the intestate laws. If such gifts were not taxable, the provisions of the Transfer Tax Law could be nullified and rendered ineffective. To prevent such an evasion of the law the statute provides that such gifts shall be taxable in the same manner as if the property constituting the gift were transferred by will or under the intestate laws. I think the evidence before the appraiser was sufficient to warrant his finding that the conveyance of the premises by the decedent to her son Charles Dunne constituted a gift in contemplation of death and that it was therefore subject to a transfer tax.”

c. STATUTORY TIME LIMIT.

It was to cover cases like those of Mills and Spreckles that Judge McElroy in his able work on "Inheritance Taxation" made this suggestion, at page 109.

"A provision in the statute fixing a definite time prior to death, within which gifts would be deemed "made in contemplation of death," would settle all contention in respect to gifts of this kind, but as yet the wisdom, or even the necessity, of such a provision has not received the consideration of the Legislature."

This suggestion has been adopted by Colorado, Wisconsin and several other states as well as by the Federal Statute; but has not yet been construed by the courts. There may be some question as to its constitutionality. If a young man in good health deeds his home to his wife, and the next day is struck by lightning, or is killed in an accident, the gift would be taxable under such a statute. As to whether the courts would sustain such a tax, *quære?*

d. TAX ACCRUES AT DATE OF GIFT.

Theoretically the tax accrues at the date of a gift in contemplation of death, though proceedings are in practice never brought to collect it until death reveals the facts. It would seem unjust to impose interest for six years when the gift was made that length of time prior to the statute; but such is the logic of the case.

Matter of Hodges, 215 N. Y. 447; 109 N. E. 559.

The court said:

"Here, however, under the express provisions of the Tax Law (§ 222) the gift of bonds and securities to the wife was taxable as soon as it was made. As such gifts seldom become known to the taxing authorities until after the death of the person making them there is usually no effort to tax them earlier; but this fact does not affect their liability to earlier taxation if ascertained."

4. Gifts to Take Effect in Possession or Enjoyment at or After Death.

a. TRUST DEED RESERVING INCOME TO DONOR.

Where the grantor reserves to himself a life interest and the income is paid to him the gift of the remainder interest under the deed is a taxable transfer.

Matter of Green, 153 N. Y. 223; 47 N. E. 292.

Matter of Keeney, 194 N. Y. 281; 87 N. E. 428; aff., 222 U. S. 525.

In the Keeney case Judge Cullen, writing for the court, says at page 286:

“A not wholly unnatural desire exists among owners of property to avoid the imposition of inheritance taxes upon the estates they may leave so that such estates may pass to the objects of their bounty unimpaired. It is a matter of common knowledge that for this purpose trusts or other conveyances are made whereby the grantor reserves to himself the beneficial enjoyment of his estate during life. Were it not for the provision of the statute which is challenged, it is clear that in many cases the estate, on the death of the grantor, would pass free from tax to the same persons who would take it had the grantor made a will or died intestate. It is true that an ingenious mind may devise other means of avoiding an inheritance tax, but the one commonly used is a transfer with reservation of a life estate. We think this fact justified the legislature in singling out this class of transfers as subject to a special tax.”

In the same case the U. S. Supreme Court said, Judge Lamar writing the opinion:

“There is no natural right to create artificial and technical estates with limitations over, nor have the remainder men any more right to succeed to possession of property under such deeds than legatees or devisees under a will. The privilege of acquiring property by such an instrument is as much dependent upon the law as that of acquir-

ing property by inheritance; and transfers to take effect at death have frequently been classed with death duties, legacy and inheritance taxes.”

Keeney v. New York, 222 U. S. 525, 533; 32 S. Ct. Rep. 105.

To the same effect are;

Matter of Bostwick, 160 N. Y. 489; 55 N. E. 208.

Matter of Dana, 215 N. Y. 461; 109 N. E. 557.

Matter of Beal, 167 App. Div. 916; 151 Supp. 1103; aff., 215 N. Y. 620.

Matter of Patterson, 146 App. Div. 286; 130 Supp. 970; aff., 204 N. Y. 677.

Matter of Ogsbury, 7 App. Div. 71; 39 Supp. 987.

Matter of Cowan, N. Y. L. J., July 24, 1913.

New England Trust Co. v. Abbott, 205 Mass. 279; 91 N. E. 379.

Re Douglas County, 84 Neb. 506; 121 N. W. 593.

Lines' Estate, 155 Pa. St. 378; 26 A. 728.

Reisch v. Commonwealth, 106 Pa. St. 521.

Appeal of Seibert, 110 Pa. St. 324; 1 A. 346.

Lamb v. Morrow, 140 Ia. 89; 117 N. W. 1118.

State v. Bullen, 143 Wis. 512; 128 N. W. 109; aff., 240 U. S. 625.

In the recent case of *Bullen v. Wisconsin*, 240 U. S. 625, (sustaining *State v. Bullen*, 143 Wis. 512 *supra*) the whole subject of trust deeds reserving life use and power of revocation was again discussed. In this case the decedent gave a fund of \$1,000,000 to a Trust Company in Illinois, reserving a part of the income, the rest to his wife and four sons and on his death the principal to them. He also reserved a right to revoke and a right to control the investment of the fund. He then incautiously moved to Wisconsin and changed his domicile to that state leaving the corpus of the trust fund in Illinois. Result; the fund was taxed in both states and the heirs appealed to the United States Supreme Court which said, in sustaining both taxes, Mr. Justice Holmes speaking for the court at page 630:

“ We do not speak of evasion because when the law draws a line a case is on one side of it or the other and

if on the safe side is none the worse legally that a party has availed himself to the full extent of what the law permits. When an act is condemned as an evasion what is meant is that it is on the wrong side of the line indicated by the policy if not by the mere letter of the law. What we do say is that the Supreme Court of Wisconsin was fully justified in treating Bullen's general power of disposition as equivalent to a fee for the purposes of the taxing statute, that there is no constitutional objection to its doing so, and that although Illinois has also taxed the fund, as it might, we are not aware that it has attempted to qualify the effect that Wisconsin has given to the power and do not intimate that it could have done so if it had tried."

b. WHEN PART OF THE INCOME IS RESERVED.

And so it is held that when a part of the income is reserved the remainder created is taxable *pro tanto*, where severable.

When a trust deed, not made in contemplation of death, takes effect on delivery for the sole benefit of the *cestui que trustent* except that the grantors reserve the right to themselves or the survivor to an annual income of \$2,400 per year for life, the court may separate the portion to take effect in *presenti* and in *futuro*, and hold that so much of the estate conveyed as was necessary to produce an annual income of \$2,400 is subject to an inheritance tax.

People v. Kelly, 218 Ill. 509; 75 N. E. 1038.

So where a trust deed was made before the statute, reserving life estate with remainders subject to another life estate and donor died after statute, remainder vested and so not taxable—intervening life estate which accrued at death of donor, taxable.

People v. Carpenter, 264 Ill. 400; 106 N. E. 302.

A trust deed reserving life estate made by a non-resident of property out of the state does not become a taxable transfer because the property is subsequently invested in New York.

Matter of Dwight, N. Y. L. J., Oct. 8, 1911, aff. 149 App. Div. 912; 133 Supp. 1119.

c. WHERE LIFE USE IS WAIVED.

It has been held in Iowa that the remainderman may show by parol evidence that the donor, subsequent to the delivery of the deed, waived the life use, and that an absolute title vested.

Lamb v. Morrow, 140 La. 89; 117 N. W. 1118.

This would seem to open a wide door to evasion of the tax and may be considered of doubtful authority, on the question of varying a written instrument of parol.

d. RESERVATION OF POWER TO REVOKE.

The authorities draw a sharp distinction between deeds of trust reserving a life use where there was reserved also a power to revoke and such deeds where the transfer was absolute. If such a deed contains no such power of revocation it took effect at the date of the deed and if that date was prior to the statute or the deceased was at the time a non-resident the remainder is not taxable on the death of the life tenant. Or where the statute taxing intangibles has been repealed the reverse may be the result.

Matter of Dwight, N. Y. L. J., Oct. 8, 1911; aff., 149 App. Div. 912; 133 Supp. 1119.

Matter of Meserole, 98 Misc. 105; 162 Supp. 414.

Matter of Webber, 151 App. Div. 539; 136 Supp. 83.

Matter of Atterbury, N. Y. L. J., March 25, 1913.

Matter of Agnew, N. Y. L. J., Dec. 13, 1913.

Matter of Gibson, N. Y. L. J., March 3, 1914.

Matter of Russell, N. Y. L. J., June 1, 1914.

Matter of Curry, N. Y. L. J., May 27, 1914.

On the other hand, where there is reserved a power of revocation the gift does not become complete until the date of the donor's death and the law as of that date applies:

Matter of Bostwick, 160 N. Y. 489; 55 N. E. 208.

Matter of Dana, 164 App. Div. 45; 149 Supp. 417; aff. 214 N. Y. 710.

Matter of Dana, 215 N. Y. 461; 109 N. E. 557.

Matter of Hoyt, 86 Misc. 696; 149 Supp. 91.

Matter of Schermerhorn, William C., N. Y. L. J., June 26, 1913.

Matter of Caswell, N. Y. L. J., April 24, 1914.

Matter of Ely, 149 Supp. 90.

A rather pretty problem was presented for solution in *Matter of Hawes*, where a resident of Massachusetts made a trust deed in 1864 reserving to himself the income for life and a power of appointment on his demise. The deed further provided that if he failed to exercise the power of appointment the property should be distributed under the intestate laws of Massachusetts. Part of the trust fund was subsequently invested in New York securities and the donor died prior to the New York amendment of 1911 which repealed the tax on such securities, without exercising the power of appointment he had reserved.

The heirs claimed that they took under the deed and that the Massachusetts statutes of distribution should be read into that deed, and that as it was executed in 1864, long prior to any inheritance tax statutes in either New York or Massachusetts that their succession was exempt from tax. The New York County surrogate so held; but he was reversed by the Appellate Division and this decision was affirmed without opinion by the Court of Appeals July 12, 1917.

Matter of Hawes, 162 App. Div. 173; 147 Supp. 329; aff., 221 N. Y. mem.

It was held in *Matter of Masury*, 28 App. Div. 580; 51 Supp. 331, aff. 159 N. Y. 532; 53 N. E. 1127, that the reservation of a bare power to revoke where the income

was paid to the donee was insufficient to prevent the vesting of title without some evidence that the donor intended to exercise it.

The *Masury* case was distinguished and confined to its particular facts in *Matter of Bostwick*, 160 N. Y. 489; 55 N. E. 208. The court said:

“I think that we may have gone too far in generally affirming the Masury decision; certainly the limit was then reached, beyond which the courts could not go without emasculating the provisions of the statute. We thought there were some reason in the facts of the Masury case for finding an intention in the donor to make an absolute transfer of property during his life, which the mere reservation of a power to revoke was of itself, insufficient to negative. But, if the trust transfers now in question were held to be without the operation of the act, too dangerous a latitude of action would be permitted to persons who desired to evade its provisions by some technical transfer, which would still leave the substantial rights of ownership in the donor.”

The later cases in New York follow the Bostwick case.

Matter of Dana, 164 App. Div. 45; 149 Supp. 417; aff. 214 N. Y. 710.

In *Welch v. Treasurer*, 217 Mass. 348; 104 N. E. 726, the donor died ten years prior to the statute. The deed was to trustees and was subject to a possible defeasance by the joint action of the trustees and Mr. and Mrs. Loring. The court held this possibility was insufficient to prevent the vesting of title. It said:

“The plain meaning of this language is that property whose title passed before the date when the statute took effect, is not affected by it. For determining whether this or the earlier laws should apply, a definite and practical date was provided,—that of death where the property passes by will or under the intestate succession laws, and that of the deed when the title so passes. This section

applies to the case at bar. Almost ten years before the statute became operative Mr. Loring irrevocably and completely conveyed away all his right and title in this property; and at that time, and by the same instrument, the life interest of the petitioners was vested in them, even though it was subject to possible defeasance by the joint act of the trustees, Mr. Loring, and, during her life, Mrs. Loring. As between the grantor and the trustees the conveyance was absolute, as he had no more power to revoke or alter the deed than he would have had if the so called power of revocation had not been inserted therein."

On the other hand, where there was a deed to trustees with life use reserved and power to appoint by will, the deed being made before the statute, and the deceased died exercising the power of appointment reserved in the deed, held taxable. The court said:

"We see no difference in principle between property passing by a deed intended to take effect in possession or enjoyment on the death of the grantor and property passing by will. In either case it is the privilege of disposing of property after the death of the grantor or testator and of succeeding to it which is taxed, though the amount of the tax is determined by the value of the property. The constitutionality of the law in regard to taxing property passing by will was fully considered in *Minot v. Winthrop*, 162 Mass. 113; 38 N. E. 512, and that case, we think, is decisive of this.

"It is immaterial, it seems to us, in this case, as it would be in the case of a will, that the indentures were dated and executed before St. 1891, c. 425, took effect. It is the vesting of the property in possession and enjoyment on the death of the grantor and after the statute took effect, that renders it liable to the tax, and both of those things happened in this case. *In re Green* and *In re Seaman, ubi supra*.

“The appellant has pointed out some difficulties that might arise in a supposable case, but it is enough to say that they do not exist in this case. No interest vested in this case either in possession or enjoyment in any of the legatees till after the death of the grantor; and that did not happen till after the passage of St. 1891, c. 425. It was held in *Cushing v. Aylwin*, 12 Mete. 169, that Rev. Sts. c. 62, § 3, applied to a will made before that law took effect, ‘when the will had not taken effect, before that time, by the death of the testator.’ We think that that case applies to this, and, if authority is needed, is sufficient to justify the conclusion to which we have come. It is true that in New York there is an express provision by which the statute is applicable whether the transfer was made before or after the passage of the act. But we think that the conclusion arrived at in the cases in that state to which we have referred would have been the same without that provision.”

Crocker v. Shaw, 174 Mass. 266; 54 N. E. 549.

And this is the universal rule in other states.

State v. Bullen, 143 Wis. 512; 128 N. W. 109; aff. 240 U. S. 625.

Re Line's Estate, 155 Pa. St. 378; 26 A. 728.

N. E. Trust Co. v. Abbott, 205 Mass. 279; 91 N. E. 379.

In the *Abbott case* the court said:

“The only part of the property which was finally disposed of in a known and definitely stated way was the income for the period of five years. The disposition of the principal was left subject to contingencies, any one of three of which might terminate the trust and give direction to the payment of the principal. The creator of the trust, six months before the expiration of the five years, could give notice of his intention to withdraw the principal, or the Trust Company could give notice of its intention to pay it off, in either of which cases the money would

be returned to Marshall; or, if Marshall survived and no notice was given, another period of five years would begin under the same arrangement; or if Marshall died before the expiration of the first period and no notice had been given, the trust would be terminated and the principal paid off to Miss Abbott at the end of sixty days from the expiration of the period.

“ She had a vested interest in the income until the termination of the trust. The arrangement in regard to the principal was very different. Her only interest in that was contingent, and she was not to enter into the possession and enjoyment of it, in any event, until after the death of Marshall, and then only if the trust had not been terminated by either party by giving notice in his lifetime.

“ The question under the statute is whether this gift of the property was ‘ made or intended to take effect in possession or enjoyment after the death of the grantor.’ We think it plain that it was. Miss Abbott could have no possession or enjoyment of the principal until after his death. The fact that she had the possession and enjoyment of the income in his lifetime makes no difference. In that respect the case is the same as if this income had been given to another person, with the disposition of the principal that appears in the agreement.”

So where a right was reserved “ to alter, change, modify or revoke all disposition and direction as to transfer and dispositions made and to be made of said property.” Held taxable.

Line's Estate, 155 Pa. St. 378; 26 A. 728.

D.—CONSIDERATION AS AFFECTING TESTAMENTARY TRANSFERS.

“ Transfers by deed, grant, bargain, sale or gift, made in contemplation of death, or intended to take effect in possession or enjoyment at or after death.” Such is the

language of substantially all the statutes and of the Federal act. Some of the statutes except transfers made on “adequate” consideration or “*bona fide* consideration in money or money’s worth.”

Are such transfers taxable when made on consideration, without reference to its adequacy?

The problem is common to all jurisdictions where inheritance taxes are levied.

In the early cases the courts were inclined to the doctrine that the words “deed, grant, bargain sale” meant nothing or meant transfers in those forms which were in fact gifts.

“The word ‘sale’ includes only such transactions which though in form ‘sales’ are in fact gifts.”

Hagerty v. State, 55 Ohio St. 613; 45 N. E. 1046.

“The words refer to transfers without consideration which become operative only by way of gift.”

Blair v. Herold, 150 Fed. 199; aff. 158 Fed. 804.

“It is very evident that the word ‘deed’ as used in this act has no reference to a conveyance of property by such an instrument made in the ordinary course of business for a valid consideration, but is confined, to conveyances of real property, intended as gifts.”

Matter of Birdsall, 22 Misc. 180; 49 Supp. 450; aff. 43 App. Div. 624; 60 Supp. 1133.

“I do not consider that the Statute has reference to transfers made upon a valuable consideration, for the tax is not one upon payment; but upon the right of succession. The payment of an obligation dependent upon valuable consideration is not a succession in any sense.”

Matter of Miller, 77 App. Div. 473; 78 Supp. 930.

“If a person, fully realizing that his death is to occur within a few hours, should convey by deed real estate and

receive the full consideration therefor, it would not be claimed that the real estate so conveyed would be subject to the tax in question, notwithstanding the conveyance was clearly made in contemplation of death."

Matter of Spaulding, 49 App. Div. 541; 63 Supp. 694; aff. 163 N. Y. 607; 57 N. E. 1124.

"The transfer related to in this subdivision is a gratuitous transfer, in other words a gift."

Matter of Escoriaza, N. Y. L. J., Nov. 15, 1914.

The trend of the authorities however has been to a broader construction of the statute. They now divide such transfers into three classes:

1. When the transaction is completed *inter vivos* though payment is postponed until death;
2. Where the contract is executory;
3. When the consideration is inadequate.

The first class of transfers are not taxable; the second and third are.

1. Where the Transaction is Completed Inter Vivos.

In the *Matter of Thorne*, 44 App. Div., p. 8; 60 Supp. 419, appeal dismissed 162 N. Y. 238, there was a completed transfer of \$100,000 of stock in the American Press Association upon the consideration that the donee would support the donor during life. "It amounted to the purchase of an annuity," said the Court.

In the *Matter of Edgerton*, 35 App. Div. 125; 54 Supp. 700, aff. 158 N. Y. 671; 52 N. E. 1124, there was a completed transfer of a large property to nieces and nephews upon a consideration of bonds binding them to support the donor during life. This was held a completed transfer *inter vivos* and also amounted to an annuity.

In the *Matter of Hess*, 110 App. Div. 476; 96 Supp. 990, aff. 187 N. Y. 554 80 N. E. 1111, there was a deed of land

reserving the right to dwell thereon during life upon consideration of an agreement to support the grantee. Here again appears the theory of an annuity.

To the same effect are:

Matter of Daniell, 4 Misc. 29.

Matter of Hulse, 15 Supp. 770.

In an ante-nuptial contract the grantor, in consideration of marriage, deeded the property in trust, reserving a life income and remainder to his widow or his son, if any. The contract was made *prior to the statute*. The remainders being thus vested the transaction was held completed *inter vivos* and not taxable.

Matter of Craig, 181 N. Y. 551; 74 N. E. 1116.

As we have seen, the later authorities hold a trust deed reserving a life estate, where made after the statute, taxable.

Matter of Keeney, 194 N. Y. 281; 87 N. E. 428; aff. 222 U. S. 525.

The principle is well illustrated by a recent case in Illinois:

On the death of William J. Orendorff intestate his widow and his three sons agreed to divide his property not according to the statutes of distribution but by giving the widow a life estate in the whole property and on her death the remainder to the three sons. This was held not a contract to take effect at death but an agreement complete *inter vivos* on valid consideration. On the death of the widow the remainder interest in the three sons was held not subject to an inheritance tax. The court said, at page 254:

“In view of the interest the law gave her in her husband’s estate there was ample consideration for William J. Orendorff’s widow, Mary Orendorff, to sell all the interest in the remainder of said shares of stock for the

life interest that was given her by said agreement. Without question Mary Orendorff and her sons, after her husband's death, could by agreement acting together, dispose of all his property in any way they saw fit. An absolute transfer or gift of property left by William J. Orendorff, made in good faith, for a valuable consideration, at the time this agreement was made, or at any time before her death, would not be subject to an inheritance tax at the death of Mary Orendorff as part of her estate."

People v. Orendorff, 262 Ill. 246; 104 N. E. 656.

A similar case arose in New York with a similar result.

Matter of Polhemus, 84 Misc. 332; 145 Supp. 1107.

The leading case in New York presents some difficulties and is apt to mislead if not carefully analyzed, and it has frequently been distinguished. In the *Matter of Baker*, 83 App. Div. 530; 82 Supp. 390, aff. 178 N. Y. 575, one Henry B. Baker being about to marry entered into an ante-nuptial contract with his prospective wife whereby he agreed in consideration of the contemplated marriage, to presently give her the sum of \$1,000, and if the marriage were consummated and his wife outlived him, that he would provide by will for the payment of \$20,000 to her out of his estate. The wife on her part agreed to accept this provision in lieu of her dower rights in her husband's property. Baker died intestate, leaving his widow and a sister who was his next of kin and only heir at law, and by agreement between them the \$20,000 was paid to the widow out of the estate. The question was whether this sum was taxable, and it was held that it was not because the agreement that the wife should be paid out of the estate created a debt payable out of the husband's estate after his death.

In *Logan v. Whitley*, 129 App. Div. 666; 114 Supp. 255, there was an ante-nuptial contract precisely similar to

that in the *Baker case*. The amount to be paid was \$10,000. The husband shot and killed his wife and then committed suicide. A complaint in a suit by the wife's next of kin was sustained by the Appellate Division on the theory that it was in the nature of a debt against the estate which was good and valid, although the wife did not survive her husband by reason of his own wrongful act. In other words, the Court held that it was not a claim which took effect in possession and enjoyment after the husband's death because the wife never in fact became his widow.

The principle is applied in the matter of life insurance. Where the policy is payable to the estate it becomes part of the estate and is taxable.

Matter of Knoedler, 140 N. Y. 377; 35 N. E. 601.

But where the proceeds are payable to a beneficiary they never become part of the estate and the contract is not one covered by the provisions of the statute.

Matter of Parsons, 117 App. Div. 321; 102 Supp. 168.

Tyler v. Treasurer (Mass.), 115 N. E. 300.

The distinction between two classes of policies — those payable to the insured or his personal representatives, and those payable to a specific beneficiary — is clearly recognized by the decisions. In the first class the contract is made for the benefit of the insured and the proceeds pass to his personal representatives as part of his estate and are liable for the payment of his debts and legacies; while in the latter case the contract is made for the benefit of others, and the proceeds are transferred to them by the terms of the contract, and not by virtue of the Statute of Distributions or the provisions of the will of the insured.

Heaton on Surrogate's Courts, p. 1100, citing *Matter of Fay*, 25 Misc. 468; 55 Supp. 749.

2. Where the Contract is Executory.

A distinction, however, arises, where the contract is executory even though full and valid consideration be paid.

Matter of Kidd, 188 N. Y. 274; 80 N. E. 924.

George W. Kidd, being about to marry a widow, entered into an ante-nuptial contract with her whereby, in consideration of the marriage, and the promise of his expectant wife to turn over to him the sum of \$40,000, he agreed that he would adopt Grace C. Slocum, her daughter, give her his name and make her his heir, and if there should be no issue of the marriage (as there was not) that he would devise and bequeath all of his property to said Grace C. Slocum. The mother fulfilled her part of the agreement, but Kidd failed to fulfill his part, leaving at his death a will whereby he disposed of his property otherwise than as he had agreed. Grace C. Slocum (then named Dickinson) sued to establish Kidd's contract for her benefit, and succeeded in obtaining a judgment that she was entitled to his whole estate. The question was whether the property thus recovered was subject to a transfer tax. It was held that it was. It was pointed out in the opinion that no present interest in the estate vested in Miss Slocum by virtue of Kidd's agreement with her mother. All that Kidd agreed to do was to leave her whatever he might have when he died, but in the meantime, while he could not have conveyed away his property in fraud of her rights, he might have entirely consumed it in living expenses or have lost it in speculation.

This case overrules *Matter of Demers*, 41 Misc. 470; 84 Supp. 1109.

These principles were applied and the distinction between the *Baker* and *Kidd* cases emphasized in

Matter of Cory, 177 App. Div. 871; 164 Supp. 956; aff. 121 N. Y. mem.

Here two brothers, long associated in business as copartners, incorporated their business and issued stock worth \$200 a share, each brother having 500 shares or an interest worth \$100,000. They agreed that the survivor might buy of the estate of the decedent the \$100,000 interest for \$60 per share or \$30,000. The deceased brother, Charles, ratified the agreement by will. The surviving brother, John, claimed that he should be taxed on a transfer of \$30,000 and not of \$100,000 and the surrogate so held. In the course of its opinion reversing this decision the Appellate Division said:

“ The statute imposed a tax upon the ‘ transfer by deed, grant, bargain, sale or gift * * * intended to take effect in possession or enjoyment at or after death.’ The transfer of the stock of John M. Cory falls exactly within the terms of the act. There was not a present sale of the stock from Charles Cory to his brother, but merely a contract that after Charles Cory’s death John M. Cory might purchase the stock at an agreed price. We are of the opinion that the mutuality of obligation assumed by the brothers furnished a sufficient consideration for their mutual agreement; but, even so, the agreement constituted merely a mutual bargain for the sale of the stock after the death of whichever brother should first die, and under which the transfer of ownership could not take effect either in possession or enjoyment until after death. In fact, so long as Charles Cory lived he could at any time have sold or otherwise parted with the stock as he chose, without violating his agreement with his brother, which in terms applied only to the stock owned by the brother first dying ‘ at the time of his decease.’ Until one of the brothers died the contract remained wholly executory, and after death the only right given to the survivor was that he might buy the stock from the estate of the decedent, paying therefor sixty dollars per share.”

Two days after the Cory case had been affirmed without opinion by the Court of Appeals, July 14, 1917, the Appellate Division, First Department handed down a decision in *Matter of Orvis* reversing the New York county surrogate who had held that where two partners entered into an agreement that the survivor should take two funds aggregating \$1,000,000 there was no tax as the agreement was upon consideration and did not come within the terms of the statute. This went a step beyond the *Cory* case. Two justices wrote dissenting opinions (Shearn and Page) and Justices Smith and Dowling concurred with Scott, P. J.

As this is a pioneer case on the subject the majority opinion is given in full. It states the facts sufficiently.

SUPREME COURT—APPELLATE DIVISION.

FIRST DEPARTMENT, JULY 14, 1917.

FRANCIS M. SCOTT,
VICTOR J. DOWLING,
WALTER LLOYD SMITH,
ALFRED R. PAGE,
CLARENCE J. SHEARN, JJ.

In the Matter of the Transfer Tax upon
the Estate of CHARLES E. ORVIS,
Deceased.

COMPTROLLER OF THE STATE OF NEW YORK,
Appellant.

EDWIN W. ORVIS, F. HOWARD SMITH and
WARNER D. ORVIS, Executors,
Respondents.

APPEAL by State Comptroller from an order fixing a transfer tax.

Alexander Otis, for appellant.

Jabish Holmes, for respondents.

SCOTT, J. The sole question involved in this appeal is as to the taxability of two certain funds established by the deceased, Charles E. Orvis, and his brother and partner in business Edwin W. Orvis.

These two brothers had been members of the copartnership of Orvis Bros. and Co., and on January 2, 1911, made a mutual agreement in the following form:

“Whereas, it is the desire of Charles E. Orvis and Edwin W. Orvis, founders of the firm of Orvis Brothers and Co., to provide for the continuation of the said firm, by the survivor, in event of the death of either of them.

“Now therefore it is hereby mutually agreed by and between said Charles E. Orvis and Edwin W. Orvis, that the sum of five hundred thousand dollars shall be drawn from the profits and accumulations of the said firm, heretofore accrued, and shall be placed to the credit of Foundation Account, and that such account shall be owned equally (half and half) by said Charles E. Orvis and Edwin W. Orvis, and it is hereby expressly and distinctly agreed by and between the parties hereto, that in the event of the decease of either of them, the survivor of them shall be the sole owner of the Foundation Account, and the heirs of the one deceased shall have no right, title, interest or claim thereto. And it is hereby further agreed that to provide against any impairment of the said Foundation Account, an equal amount of five hundred thousand dollars shall be placed to the credit of Contingent Account, and it is expressly and distinctly agreed by the parties hereto that the terms of this agreement, in relation to the said Contingent Account shall in every respect be exactly the same as the terms in regard to the Foundation Account, as hereinbefore stated.

“In witness whereof we have signed, sealed and delivered this agreement on the second day of January, 1911.”

The two funds provided for by this agreement were set up and were continued until the death of Charles E. Orvis, by which time the so-called Foundation Account had been impaired to the extent of \$134,000, the Contingent Account remaining intact.

As will be seen from a reading of the agreement, one-half of each fund was owned by Charles E. Orvis until at his death it passed by virtue of the agreement to his brother Edwin. The question is whether or not a tax should be levied upon this transfer or devolution of ownership. The learned surrogate held that it should not, because the agreement under which the devolution or transfer was to take place, rested on what he termed a valuable consideration, such consideration being found in the mutuality of the agreement whereby the brothers reciprocally agreed that the survivor of them should take the interest in the business belonging to him who died first.

That this does furnish a sufficient consideration to support the agreement as between themselves I do not question, but I do not consider that that fact alone establishes the non-taxability of the transfer. Mutual promises may furnish a sufficient consideration for a promise to convey in the future, but if there be no other consideration the conveyance when it takes place is, in effect, a voluntary one.

Section 220 of the Tax Law imposes a tax upon a transfer by "grant, sale or gift—intended to take effect in possession or enjoyment at or after such death", i. e., that of the grantor, vendor or donor.

This language seems to fit exactly the present case. Whether the transaction be considered a sale or a gift, it was clearly intended to take effect only on the death of the vendor or donor, and not then unless the vendee or donee should outlive the vendor or donor.

Each copartner retained the sole ownership of one-half of the moneys going to make up the two funds, just as he had before the funds were set up, for it is specifically provided that "such amount shall be owned equally (half and half) by said Charles E. Orvis and Edwin W. Orvis."

The effect of the transaction is precisely as it would have been if each brother had made a will leaving to the other his interest in the accumulated and funded profits, providing such brother survived. In such case no one would doubt that the transfer was taxable.

Under the terms of the agreement each brother retained the sole ownership of his share of the two funds and was entitled to the profits arising from the use thereof. The only limitation upon his ownership was that he could not freely dispose of the funds after death, if he happened to pre-decease his brother. All the elements were present that have led to the taxation of property conveyed by trust deeds under which the creator of the trust has retained the beneficial title of the property during life, and has disposed of the remainder after death. (*Matter of Green*, 153 N. Y. 223, 47 N. E. 292; *Matter of Brandreth*, 169 N. Y. 473, 62 N. E. 563; *Matter of Cornell*, 170 N. Y. 423; 63 N. E. 445; *Matter of Keeney*, 194 N. Y. 581, 87 N. E. 428). In fact the agreement was essentially testamentary in character, and is therefore subject to the transfer tax law (*Matter of Dana*, 164 App. Div. 45; 149 Supp. 417, aff'd. 214 N. Y. 710).

I am unable to distinguish the present case in principle from *Matter of Kidd*, 178 N. Y. 274. In that case the testator had made a valid *ante mortem* agreement to leave his property by will to his wife's daughter. He attempted to leave it otherwise, but the agreement was upheld and the daughter's right to receive his property, at his death was sustained, but it was held that the transfer was

taxable. That case and this are clearly distinguishable from those in which the transfer at death is to be made in payment of an antecedent debt, as in *Matter of Baker* (83 App. Div. 530; 77 Supp. 170, aff'd. 178 N. Y. 575), or in those in which there had been an actual completed sale during life by title passed, although possession was to be postponed until death of grantor or vendor. Nothing of the sort appears in the present case. Charles E. Orvis distinctly did not confer title upon his brother during his own life, for it is expressly agreed that he should continue to own half of the two funds, and whatever consideration there was for his promise that the brother should take the whole fund at death, was but a reciprocal promise *in futuro* by the brothers and in no sense a present, valuable consideration which created a debt.

In my opinion the order should be reversed with costs and disbursements to the appellant, and the matter remitted to the Surrogates' Court for entry of an order imposing the proper tax upon the transfer in question.

Dowling & Smith, JJ., concur.

In *Matter of Keeney*, 194 N. Y. 281; 87 N. E. 428; aff. 222 U. S. 525, the transaction was by a deed of trust executed four years before decedent's death; she conveyed certain bonds and stock in trust, the income to be paid, one-fourth to her during her life and three-fourths to her children; and after her death to continue to pay the income or pay the principal to the children or their issue. A tax upon the one-fourth interest of which the decedent had the income for life was sustained as a transfer to take effect at death. The opinion does not show what the consideration was for the agreement, but being under seal consideration is presumed. Judge Cullen used this language in speaking of the Statute: "It may also be observed that if the statute is to be considered as applicable only to voluntary gifts, *as to which we express no opinion, etc.*"

In *Matter of Dana*, 164 App. Div. 45; 149 Supp. 417; aff. 214 N. Y. 710, it appeared that the decedent was a stockholder and the President of William B. Dana Company, and five years before his death he surrendered the certificate for his shares and had a new certificate issued to him for 620 shares, which certificate read "*William B. Dana and Jacob Seibert, Jr., and the survivor.*" This certificate he delivered to Seibert, at the same time executing and delivering to him also an instrument in writing whereby he appointed Seibert trustee of such shares of stock, reserving to himself the income derived from the stock and the right to revoke the trust and retake the stock at any time; he also reserved the right to appoint a new trustee and to dictate how the stock should be voted. The court imposed a tax upon the transfer as a transfer to take effect at death. Some evidence was given showing that the inducing cause of the gift was services which Seibert had rendered to the William B. Dana Company in the past and might be induced to render in the future. But the fact of consideration did not alter the result.

The cases tending to support the view here presented are:

Matter of Green, 153 N. Y. 223; 47 N. E. 292.

Matter of Bostwick, 160 N. Y. 489; 55 N. E. 208.

Matter of Brandreth, 169 N. Y. 437; 62 N. E. 563.

Matter of Cornell, 170 N. Y. 423; 63 N. E. 445.

Matter of Keeney, 194 N. Y. 281; 87 N. E. 428.

Matter of Skinner, 45 Misc. 559.

Matter of Dobson, 73 Misc. 470; 132 Supp. 472.

Matter of Burgheimer, 91 Misc. 468; 154 Supp. 943.

Matter of Cruger, 54 App. Div. 405; 66 Supp. 636; aff. 166 N. Y. 602; 59 N. E. 1121.

Matter of Dana, 164 App. Div. 45; 149 Supp. 417; aff. 214 N. Y. 710.

Appeal of Waugh, 78 Pa. St. 436.

While some of these agreements were voluntary several were upon consideration and nearly all the others were under seal importing consideration.

They were all *bargains* to take effect in possession or enjoyment at or after death and were held taxable under the Statute.

In addition to the authorities already reviewed there are several instances where a tax has been imposed upon transfers by agreement very similar to the one in the *Cory* case (*supra*).

In *Matter of Burgheimer*, 91 Misc. 468; 154 Supp. 943, the decedent agreed with his brother and copartner that on the death of either the survivor should take the good will of the firm. Neither brother had any interest in the other's share of the good will until after death. There were also mutual wills carrying the agreement into effect. Surrogate Fowler held the interest in the good will owned by the deceased brother taxable.

In *Matter of Skinner*, 45 Misc. 559; 92 Supp. 972, Surrogate Silkman in Westchester County, held that where the decedent five months before his death transferred by deed all of his real and personal property amounting to more than \$100,000 to his secretary "*in consideration* of services heretofore rendered me and to be rendered as my private secretary and business manager," such transfer was taxable. The opinion does not show whether there was any proof taken as to the services which the secretary had or did render under this contract; nor was such proof necessary, for the transfer was by a deed under seal, so that there was a presumption of consideration which could only be rebutted on the ground of fraud.

In *Matter of Dobson*, 73 Misc. 170; 132 Supp. 472, Surrogate Sexton of Oneida County held that a transfer was taxable where the decedent deeded to her cousin with whom she was living \$80,000 of real property, *in consideration* that the cousin should execute a lease to the grantor for her lifetime, and which lease was executed the same day. A tax was imposed, the surrogate saying

that it was not a bona fide sale for a valuable consideration, but a gift by deed of \$80,000 worth of real property for such companionship and care as she might feel equal to.

3. The Consideration Must be Adequate.

The statutes of California, Colorado, Delaware, Georgia, Kansas, Maine, Massachusetts, Nevada, Rhode Island, Vermont, Wisconsin and the Federal Act now provide that a transfer taking effect at death must be upon *adequate* consideration and most of them add in "money or money's worth."

These provisions have all been inserted by amendment within the last two or three years and there are but few cases construing them.

In the *Estate of Reynolds*, 169 Cal. 600; 147 Pac. 268, the court held that the amendment served to clarify but not to change the pre-existing law and applied it to a case arising *prior* to the amendment. A father suffering from a mortal disease transferred his department store valued at \$100,000, upon consideration that his son should assume the debts amounting to \$30,000 and pay the father \$600 a month during life. The court said:

"If it can be said that there was any element of valuable consideration received back by the father for his transfer to the son, it was certainly not adequate from any commercial point of view. He was in failing health at the time the gift was made. It was known and he knew, that his tumor had returned and that the days of his life were numbered, and the agreement to assume an indebtedness of \$30,000 in consideration of a gift in value exceeding \$100,000, and the further agreement to pay \$600 a month during the donor's life (which agreement itself does not seem to have been observed) certainly do not measure up to the requirements of the law of a valuable and adequate

consideration. Indeed, it seems to be quite plain that, as in the case of the widow, so in the case of the son, the father in contemplation of death was transferring by gift instead of devise the valuable business which he owned and had theretofore conducted."

A similar amendment to the Massachusetts Statute has received a similar construction:

A widow advanced in years and in feeble health desired to secure during life the services and companionship of a certain man, fifty-four years of age, who was employed as a traveling salesman at a salary of \$2,200 a year in addition to his traveling expenses. In consideration of his resigning this position and removing with his wife to the widow's residence, where they continued to live and to care for her until her death, the widow deposited with a trustee \$100,000, face value, of three and one-half per cent. bonds of the Commonwealth of Massachusetts, with a declaration of trust directing the trustee to pay the income during her life in equal shares to the man and his wife, and upon her death to transfer the bonds to them in equal shares absolutely if they both survived her, or, in case, at the time of the settlor's death either of the beneficiaries should be dead, to transfer the whole of the bonds to the survivor, or, in case the settlor should survive both the beneficiaries, then at her death to transfer one-half of the bonds as one of the beneficiaries should have appointed by his will and the other half as the other beneficiary should have appointed by her will, or in default of appointment by either of them, to his or her next of kin. At the time of the settlor's death, the bonds had an actual market value of not less than \$90,000. Upon a bill in equity by the trustee for instructions, it was held that the transfer of the bonds under the deed of trust did not constitute "a bona fide purchase for full consideration in money or money's worth" within the exception contained in St.

1909, c. 490, Part IV 1, and consequently that the transfer was subject to a succession tax under that statute.

State Street Trust Co. v. Treasurer, 209 Mass. 373; 95 N. E. 851.

4. Burden of Proof.

A recent case in California holds that the burden of proof is on the comptroller to show want of consideration.

“ The act in question does not impose a tax generally upon transfers made in contemplation of death or intended to take effect in enjoyment after death. It imposes a tax only upon such transfers when made ‘ without valuable and adequate consideration.’ The absence of the consideration is just as essential to the obligation to pay the tax as the contemplation of death or the intention of the transferrer that the possession or enjoyment shall be postponed until death.”

McDongald v. Boyd, 172 Cal. 753, 757; 159 Pac. 168.

The language of the California statute may have been unfortunate but it certainly is not the intention generally of the amendments to cast a fresh burden of proof upon the state in the collection of its tax, but rather, as was said in the *Reynolds* case “ to explain and clarify ” the law as it already existed. Under the construction in the *McDongald* case the amendment would seem rather to have befogged it; but the new act of 1917 is worded with view to this decision. (See Appendix).

E.— POWER OF APPOINTMENT.

1. The Common Law Rule.

Transfers under powers of appointment have been the subject of much litigation. It was the original theory of the law as to such transfers that the exercise of a power of appointment was in legal effect merely the writing into the blank left by the will of the ancestor the

names of the appointees. As many life tenants held powers of appointment under wills probated before any inheritance tax statutes had been enacted many courts applied the principle that the tax was on the transfer and could not affect transfers consummated prior to its enactment.

Emmons v. Shaw, 171 Mass. 410; 50 N. E. 1033.

Matter of Harbeck, 161 N. Y. 211; 55 N. E. 850.

Hoyt v. Hancock, 65 N. J. Eq. 688; 55 A. 1004.

So in Kentucky it was held that a contract related back to the original will. The testator devised all his property to his mother and entered into a written contract with her that in consideration of the devise she would leave by will one-half of the property she received to A. B. The testator died leaving his mother surviving and on her death she devised the property in accordance with her contract. The inheritance tax was passed after the making of the contract by the mother and before her death, and the court holds that the property passing to A. B. is not subject to the tax. The court says that reading the will and contract together as they must be read, the mother took a life estate only with an obligation to leave by will to A. B. and that therefore A. B. really took under the will of the testator and not under that of the mother.

Winn v. Schenck, 33 Ky. L. Rep. 615, 110 S. W. 827.

In Maryland it is held that the tax is on the right to receive and, therefore, the appointees must pay the tax under the exercise of the power on the value of the property when so received.

Fisher v. State, 106 Md. 104; 66 A. 661.

The majority of the states however follow the rule in *Matter of Harbeck*, *supra*, where no statute has intervened.

2. The Statutory Rule.

In order to reach the transfer of property under such powers New York in 1897 amended the statute and declared that the tax should be imposed upon the exercise of the power in the same way as though the property belonged absolutely to the donee of the power. (Chapter 284, L. 1897).

This was sustained in

Matter of Potter, 51 App. Div. 512; 64 Supp. 1013.

Matter of Vanderbilt, 50 App. Div. 246; 63 Supp. 1079; aff. 163 N. Y. 597; 57 N. E. 1127.

Matter of Dows, 167 N. Y. 227; 60 N. E. 439; sus. sub. nom. *Orr v. Gilman*, 183 U. S. 278.

Matter of Brooks, 32 Supp. 176.

And also as to the exercise of a power under a *deed* made prior to the statute taxing inheritances.

Matter of Delano, 176 N. Y. 486; 68 N. E. 871; sus. sub. nom. *Chandler v. Kelsey*, 205 U. S. 466.

Under the common law rule relationship to the donor and not the donee determined the rate of tax.

Gallard v. Winans, 111 Md. 434-472; 74 A. 26.

But under the statute the rule is reversed.

Matter of Walworth, 66 App. Div. 171; 72 Supp. 984.

Matter of Rogers, 172 N. Y. 617; 64 N. E. 1125.

Matter of Seaver, 63 App. Div. 283; 71 Supp. 544.

The statute also provided that even if the donee of the power failed to exercise it the transfer should be taxed in the same manner as if the donee had owned the property.

This provision has been the subject of much litigation and divergent rules.

3. The New York Rule.

The provision first came up for construction in *Matter of Lansing*, 182 N. Y. 238; 74 N. E. 882. The donee of

the power exercised it but she appointed the same person who would have received the property in default of its exercise. The court held: first, that the exercise of the power was a nullity as it made no change in the devolution of the property and the appointee might elect to take under the will of the ancestor; secondly, Judge Vann, writing for the court, said: "We pass without serious discussion that part of the Statute which provides, in substance, that the failure or omission to exercise a power of appointment subjects the property to a transfer tax in the same manner as if the donee of the power had owned the property and had devised it by will (L. 1897, ch. 284, Sec. 220, Subd. 5). Where there is no transfer there is no tax and a transfer made before the act relating to taxable transfers is not affected by it because, as we held in the *Pell* case, such an act imposes a direct tax and is unconstitutional since it diminishes the value of vested estates, impairs the obligation of contracts and takes private property for public use without compensation."

Judges Cullen, O'Brien and Bartlett concurred; Judges Werner and Haight dissented and Judge Gray was absent.

4. The Massachusetts Rule.

Meanwhile the section of the New York Statute thus declared unconstitutional had been copied and is still retained in the statutes of Colorado, Connecticut, Idaho, Illinois, Massachusetts, Minnesota, Rhode Island, South Dakota, and Wisconsin.

The Supreme Court of Massachusetts refused to follow the rule laid down by the New York Court of Appeals and sustained the provision which was declared unconstitutional in the *Lansing* case, and which had been adopted in Massachusetts by Chapter 527, Sec. 8, Laws of 1909.

The question first arose in *Minot v. Treasurer*, 207 Mass. 588; 93 N. E. 973. The court reasoned thus:

“ It is but a short step further to apply the second part of the statute, which refers to coming into succession through the conduct of the donee in refusing or omitting to make an appointment that might carry the succession elsewhere. While he has the power of appointment, he is in control of the succession. He may allow it to go to the persons named in the will or deed, or he may transmit it elsewhere. By exercising the power he may give his own creditors the benefit of it after his death. When property is held subject to such possibilities of disposition, is it usurpation or an unlawful interference with vested rights for the Legislature to say that the succession in possession and enjoyment is not yet determined, that it belongs to no one until it is determined that the determination of it depends upon the will and conduct of the donee of the power, and that when it is determined by his conduct, either by action or by refraining from action, it shall be subject to a tax? We think it is in the power of the Legislature to say in reference to succession in possession after the death of the persons whose decease is awaited, that property so held is not vested in anybody, and that when it vests in possession, through a proper disposition of it which is dependent upon the will and conduct of the donee, a succession tax shall be imposed. We think that *Chanler v. Kelsey*, *ubi supra*, looks in this direction, although it does not discuss this particular subject. The decision in *Moffit v. Kelly*, 218 U. S. 400, published since the argument in the present case, is almost if not quite, decisive of the question.

“ The decision to the contrary in *re Lansing*, 182 N. Y. 238; 74 N. E. 882, was by four of the judges, two others dissenting in a well reasoned opinion. So the decision in the *Matter of Chapman*, 133 App. Div. (N. Y.) 337; 117

Supp. 679, which was afterwards affirmed by the Court of Appeals in 196 N. Y. 561, without an opinion, was by three judges, while two others joined in a dissenting opinion."

The above has been followed in the later case of *Burnham v. Treasurer*, 212 Mass. 165; 98 N. E. 603, and in the very recent case of *Montague v. State*, 163 Wis. 58; 157 N. W. 508. It may be safely assumed that the courts of the states which follow the language of the original New York Statute will sustain it and follow the Massachusetts doctrine.

On the other hand, the portion of the section declared unconstitutional in the *Lansing* case was omitted from the statute in 1911 and the section as thus amended has been copied by Arkansas, Indiana, Oklahoma and West Virginia, all very recent statutes yet to be construed. It is to be assumed they will sustain it and follow the New York rule.

5. Development of the New York Rule.

The rule that when the exercise of the power makes no material change from the devolution under the ancestor's will, in default of its exercise, the appointee may elect to take under the will of the ancestor who died prior to the statute and thus avoid the tax has led to much litigation in which the *Lansing* case has been sustained and applied.

Matter of Backhouse, 110 App. Div. 737; 96 Supp. 466; aff. 185 N. Y. 544; 77 N. E. 1181.

Matter of Spencer, 190 N. Y. 517; 83 N. E. 1132.

Matter of Haggerty, 128 App. Div. 479; 112 Supp. 1017; aff. 194 N. Y. 550; 87 N. E. 1120.

Matter of Chapman, 61 Misc. 593; 115 Supp. 981; aff. 199 N. Y. 562; 93 N. E. 1118.

Matter of Haight, 152 App. Div. 228; 136 Supp. 557.

Matter of Hoffman, 161 App. Div. 836; 146 Supp. 808; aff. 212 N. Y. 604.

Matter of Lewis, 194 N. Y. 550; 88 N. E. 1124.

Where the donee of the power makes material changes in the devolution the rule in the *Lansing* case does not apply.

Matter of Cooksey, 182 N. Y. 92; 74 N. E. 880.

But where the exercise of the power disposed of one-fifth of the property otherwise than it would have gone under the ancestor's will in default of its exercise; the tax attaches only to that one-fifth; the rest passes under the ancestor's will.

Matter of Ripley, 122 App. Div. 419; 106 Supp. 844; aff. 192 N. Y. 536; 84 N. E. 1120.

And where the donee exercised the power to pay her own debts out of the fund and left the balance to the same persons who would have received it in default of the power the tax is payable on the appointment to the creditors but the beneficiaries may elect to take the balance under the ancestor's will.

Matter of Slosson, 216 N. Y. 79; 110 N. E. 166.

In default of the power the remainder passed to the "children" of the donor of the power. The donee appointed her sister's children who were grandchildren of the donor. The word "children" in the donor's will could not be held to include "grandchildren" and the latter did not take under the ancestor's will but under the exercise of the power and their shares were taxed.

Matter of King, 217 N. Y. 358; 111 N. E. 1060.

Election to take under the will of the ancestor will be presumed where it avoids the tax.

Matter of Mitchell, N. Y. L. J., Nov. 22, 1913.

But a beneficiary under a power of appointment cannot accept its benefits in part and as to the rest elect to take under the will of an ancestor.

Matter of Isabel Brush, N. Y. L. J., April 26, 1917.

Nor can they actually receive the property under the exercise of the power and yet claim to take it under the will of the donor for purposes of the transfer tax.

Matter of Warren, 62 Misc. 444; 116 Supp. 1034.

6. Construction of Wills.

It frequently becomes a serious question whether a power has been conferred or whether the provisions of the will do not, in fact, confer a fee with remainders over that are void.

In recent case of *Appeal of Luques*, 114 Me. 235; 95 A. 1021, the ancestor, who died before the statute, gave property to his wife absolutely but provided that if she should not dispose of it during life or by will then his sons should take. The widow devised to the sons but the court held they could not elect to take under the ancestor's will as the bequest to their mother was absolute and the remainder over void.

On the other hand in a recent Arkansas case a husband devised a life estate to his wife with power to appoint "during life." She appointed by will. It was held that the exercise of the power was void and that the property passed under her husband's will who died before the statute and hence was exempt from tax.

State ex rel. McDaniel v. Gaugan, 124 Ark. 548; 187 S. W. 918.

So, in a recent Kentucky case a life estate was devised with power to appoint but in such language that it was held the life estate was enlarged to a fee and, therefore, the appointees could not take under the ancestor's will.

Commonwealth v. Stoll's Estate, 132 Ky. 234; 114 S. W. 279; 116 S. W. 687.

7. Questions of Residence.

If the donor died in a state where the transfer is taxed only upon exercise of a power, obviously no tax can accrue. If the donee has moved to a state where the tax

is against the estate of the donor — also no tax can accrue. This and other possible complexities have produced some puzzling questions.

Where the donor of the power resided in another state and the property subject to the power was in the hands of a trustee in another state the exercise of the power by a resident is not subject to the tax.

Walker v. Treasurer, etc., 221 Mass. 600; 109 N. E. 647.

The test to be applied is “ Would the property have been taxable if it had belonged to the donee of the power? ” So where a non-resident donee exercised the power over a trust fund in the possession of Massachusetts trustees shares of stock in a foreign corporation in possession of those trustees held not taxable.

Clark v. Treasurer, etc., 218 Mass. 292; 105 N. E. 1055.

Exercise of power by non-resident donee taxed only as to taxable assets within the state though the donor of the power was a resident.

Matter of Fearing, 138 App. Div. 881; 123 Supp. 396; aff. 200 N. Y. 340; 93 N. E. 956.

The donor of the power died a resident. His wife, the donee, moved to New Jersey and there died exercising the power. Taxed only as against taxable property of a non-resident within the state.

Matter of Kissel, 65 Misc. 443; 121 Supp. 1088; aff. 142 App. Div. 134; 127 Supp. 1217.

Where a resident donee exercised the power over personal property without the state, held: taxable.

Matter of Hull, 111 App. Div. 322; 97 Supp. 701; aff. 186 N. Y. 586; 79 N. E. 1107.

Acting under a power of appointment in a will executed by his mother in Kentucky a testator residing in Minnesota exercised the power by will in favor of nephews residing in Tennessee. The property was in the custody

of a resident of Kentucky. Held: that the tax was on the transfer as though the property belonged to the donee and the transfer was, therefore, taxable in Minnesota, citing *Matter of Hull, supra*.

State v. Probate Court, 124 Minn. 508; 145 N. W. 390.

Where the power was created by will of a non-resident and exercised by will of a resident, held: taxable.

Matter of Frazier, N. Y. L. J., March 28, 1912.

Bonds and mortgages on New York real estate transferred by a non-resident under the exercise of a power where there had been an intervening life estate, held: taxable under statute in force at date of creating of the power.

Matter of Warden, 94 Misc. 563; 157 Supp. 1111.

For questions arising under the taxation of transfers by power of appointment, see post Part III D Life Estates and Remainders.

F.—COMMON LAW TRANSFERS.

Transfers pursuant to the provisions of the common law are generally held not taxable under the usual language of the statutes taxing inheritances and must be specified in the act if they are not to escape taxation.

1. Dower.

A widow does not take dower as heir of her husband and it does not pass by intestate law.

Matter of Weiler, 122 Supp. 608; aff. 139 App. Div. 905; 124 Supp. 1133.

Matter of Church, 80 Misc. 447; 142 Supp. 284.

McDaniel v. Byrkett, 120 Ark. 295; 179 S. W. 491.

Estate of Sanford, 91 Neb. 752; 137 N. W. 864.

Matter of Bullen (Utah), 151 Pac. 533.

Sandford v. Jackson, 10 Paige 266.

Konvalinka v. Schlegel, 104 N. Y. 125; 9 N. E. 868.

Gray v. Gray, 5 App. Div. 132; 39 Supp. 57.

Kimbel v. Kimbel, 14 App. Div. 570; 43 Supp. 900.

The dower interest is allowed as a deduction unless a bequest is accepted in lieu of dower in which case no dower is set off and the bequest in lieu of dower is taxable.

Matter of Gordon, 172 N. Y. 25; 64 N. E. 753.

Matter of Riemann, 42 Misc. 648; 87 Supp. 731.

Matter of De Graaf, 24 Misc. 147; 53 Supp. 591.

Matter of Barbey, 114 Supp. 725.

Nice questions often arise as to whether the bequest is intended to be in lieu of dower or in addition to dower. The intent of the testator governs and usually when the entire life use is given it is held that dower cannot also have been intended.

Matter of Vivianti, 63 Misc. 618; 118 Supp. 680; aff. 206 N. Y. 656.

So where the decedent gave his widow the life use of all his realty, after the payment of all taxes, insurance and repairs out of the personal estate it was held that he could not have intended also to give one-third of the life use of the same property — or four thirds of the life use.

Matter of Foster, N. Y. L. J., Jan. 16, 1916; aff. 174 App. Div. 864.

Matter of Martinez, 160 Supp. 1121.

And where the testator devised his entire estate to a trustee with part of the income to the widow, upon her acceptance of the bequest held an incompatibility and no deduction for dower allowed.

Matter of Keys, N. Y. L. J., March 15, 1912.

On the other hand, where the bequest was of the entire estate for life or until remarriage, it was held that there was an intent to separate the life use and the dower and a deduction for dower was granted.

Matter of Knabe, N. Y. L. J., Feb. 2, 1916.

And generally, where there are no express words giving the bequest “in lieu of dower,” the widow is entitled

to both dower and bequest also, unless there is an incompatibility.

Matter of Stuyvesant, 72 Misc. 295; 131 Supp. 197.

Lewis v. Smith, 9 N. Y. 520.

Adsit v. Adsit, 2 Johns. Ch. 448.

Horstman v. Flege, 172 N. Y. 384; 65 N. E. 202.

The mere fact that the widow is largely provided for in the will is no evidence of incompatibility.

Casey v. McGowan, 50 Misc. 426; 100 Supp. 538.

Closs v. Eldert, 30 App. Div. 338; 51 Supp. 881.

Accounting of Fraser, 92 N. Y. 239.

The intent of the testator must be gathered from the will.

Roessle v. Roessle, 81 Misc. 558; 142 Supp. 984.

But if the disposition which the testator makes of his estate clearly indicates that he intended the provisions in his will to be in lieu of dower she is put to her election.

Savage v. Burnham, 17 N. Y. 561.

Vernor v. Vernon, 53 N. Y. 531.

Asche v. Asche, 113 N. Y. 232; 21 N. E. 70.

Where the husband secures an interlocutory judgment of divorce under Section 1774 of the Code, and dies before final judgment, the wife is not deprived of her dower right in his real estate.

Bryon v. Bryon, 134 App. Div. 320; 119 Supp. 41.

Where a wife obtains a divorce in Indiana on grounds other than adultery, her right of dower under the laws of the State of New York are not affected.

Van Blarican v. Larson, 130 Supp. 925.

In states where there are allowances to the widow by statute in the nature of dower, such as "widow's award"

and "family allowance" or "homestead"—all are held exempt from inheritance taxes.

Kennedy's Estate, 157 Cal. 516; 108 Pac. 280.

Crenshaw v. Moore, 124 Tenn. 528; 137 S. W. 924.

Blackburn's Estate, 51 Mont. 234; 152 Pac. 31.

Smith v. State, 161 Wis. 588; 155 N. W. 509.

Strahan's Estate, 93 Neb. 828; 142 N. W. 678.

In Illinois the rule is the contrary and dower is held taxable as a transfer under the intestate laws.

People v. Field, 248 Ill. 147.

Where a widow renounced under a will and elected to take her dower, held: taxable as a transfer under the intestate laws.

Billings v. People, 189 Ill. 472; 59 N. E. 798.

A widow's award under the Illinois statute is also held a taxable transfer.

People v. Forsyth, 273 Ill. 141; 112 N. E. 378.

None of the statutes specifically tax dower.

2. Tenancy by the Curtesy.

The same rule was applied as to a husband's tenancy by the curtesy.

Matter of Starbuck, 63 Misc. 156; 116 Supp. 1030; aff. 201 N. Y. 531; 94 N. E. 1098.

As a result of this decision the New York Statute was amended to tax tenancy by the curtesy. (Ch. 732, L. 1911.)

Curtesy is not vested right and is not alienable during the marriage; but may be modified or annulled at any time before the death of the wife.

Matter of Hinrichs, 148 Supp. 912.

Matter of Beckhardt, N. Y. L. J., June 7, 1913.

Thurber v. Townsend, 22 N. Y. 517.

Matter of Clark, 40 Hun, 233.

Albany Co. Sav. Bank v. McCarty, 149 N. Y. 71.

Where a wife executes a will devising all her property to two children of a former marriage and without providing for future issue, a child subsequently born is entitled to succeed to the same portion of his mother's real and personal property as would have descended or been distributed to him if she had die intestate; he takes this interest by inheritance as an heir at law, and his father is entitled to a tenancy by curtesy in so much of the real estate as descends to him.

Young v. Blake, 163 App. Div. 5019; 148 Supp 557.

An estate by the curtesy does not attach to property conveyed to a wife subject to the use and occupation of another during life, where she was never in actual possession of the property, and she died before the termination of the life estate.

Collins v. Russell, 184 N. Y. 74; 76 N. E. 751.

3. Marital Right.

The common law right of a husband to succeed to the personal property of his intestate wife was held not a taxable transfer under the intestate laws of New York.

Matter of Green, 144 App. Div. 232; 129 Supp. 54.

The New York Statute was amended to cover such transfers in consequence of this decision. (Ch. 732, L. 1911.)

As to a husband's marital right to succeed to his wife's personal property in New York see generally:

Matter of Thomas, 33 Misc. 729; 68 Supp. 1116.

Robins v. McClure, 100 N. Y. 328; 3 N. E. 663.

Wadheim v. Hancock and ano., 8 Misc. 506, 28 Supp. 766.

The right rests solely upon the common law in the absence of statute, and was not affected by the married woman's acts.

Vallance v. Bausch, 28 Barb. 633.

Burke v. Valentine, 52 Barb. 422.

And when a married woman dies leaving no descendants and no will the husband is entitled to her personal property *jure mariti*.

Matter of Russell, 168 N. Y. 169; 61 N. E. 166.

Barnes v. Underwood, 47 N. Y. 351.

But if the wife leaves a will the transfer is pursuant to the will even though she leaves all her property to her husband and the succession is taxable pursuant to Chapter 732, L. 1911.

Matter of Andrews, N. Y. L. J., Feb. 21, 1912.

4. Tenancies by the Entirety.

a. NOT TAXABLE AS AN INHERITANCE.

The succession to the sole estate on the death of one tenant by the entirety is not taxable as an inheritance and is not covered by the language of the usual inheritance tax statute.

Palmer v. Treasurer, 222 Mass. 263; 110 N. E. 283.

None of the statutes attempted specifically to tax this class of succession until the amendment to the New York Statute in 1916; and no other state has yet followed her example. Whether they will do so or not depends something upon the construction which the New York courts will give to the question.

b. NATURE OF THE ESTATE.

Blackstone in his Commentaries (Lewis Ed. Bk. II *p. 180) says: "The properties of a joint estate are derived from its unity which is fourfold: the unity of interest, the unity of title, the unity of time and the unity of possession."

And this is the doctrine of all modern writers on real estate:

Washburn on Real Estate, 8th ed., vol. I, p. 529.

Reeves on Real Property, vol. II, §§ 689, 670.

Tiedeman on Real Property, 2d ed., § 237.

Cyc., vol. XXIII, p. 484.

These authorities also hold that it arises, not out of contract, but by operation of law, as a result of the marital relation.

These rules are important to be borne in mind and strictly applied, because, if the courts, in dealing with common law estates, do not measure them by common law standards, the result is confusion. They apply only to real estate. There is no such thing as tenancy by the entirety of personal property.

Matter of Albrecht, 136 N. Y. 91; 32 N. E. 632.

In a case involving only the joint ownership of personal property the New York Court of Appeals recently observed, *obiter*, as follows:

“Joint tenants, by reason of the combination of entirety of interest with the power of transferring in equal shares, are said to be seized *per my et per tout*, or by the half *and* the whole, but tenants by the entirety are seized *per tout et non per my*, and the conveyance by either husband or wife will have no effect against the other if survivor. (*Hiles v. Fisher*, 144 N. Y. 306; 39 N. E. 337.) Upon the vesting of an estate by the entirety, both tenants become seized of the whole estate and upon the death of one the survivor acquires no new or additional interest by survivorship. (*Matter of Klatzl*, *supra*.)

Matter of McKelway, 221 N. Y. 15; 116 N. E. 348.

It has also been held in *Hiles v. Fisher*, 144 N. Y. 306; 39 N. E. 337, that the statutes have so far modified the common law rule as to rents and profits of lands held by the entirety that while the husband and wife are living they are joint tenants of the rents and profits; but the court is very careful to point out that the right of the husband to the entire rents and profits arose *jure uxoris* and not from the nature of the tenancy by the entirety, the court saying, “As long as the question of survivor-

ship is in abeyance they are joint tenants of the use, as the right of the husband to the rents and profits did not spring from the *nature of the estate* but from the common law rules of coverture."

c. CHANGE IN RIGHTS AT DEATH.

It might be inferred from the remarks of the learned court in the *McKelway* case that no change in ownership takes place at the death of one of the tenants by the entirety.

Obviously there is a change as to the ownership of the use — from joint ownership to sole ownership.

And though the ownership of the real estate is termed an "entirety" during the joint lives of husband and wife, a change takes place at death in the teeth of legal fiction.

Husband and wife may be "one" in the eye of the law; and "which one" may be a strenuous domestic problem; but, when the wife becomes a widow, death has abolished all fictions and asserted itself as the sole ultimate reality.

d. HOW CREATED.

A tenancy by the entirety at common law could only be created by a conveyance from a third party to husband and wife; and, as they were one in the eye of the law, the estate was a unit — inseverable.

But when a husband conveyed to his wife *and himself* as "tenants by the entirety," the Comptroller contended that a tenancy by the entirety was not created, merely because it was so described in the deed, any more than if the husband had conveyed to himself a right of dower *eo nomine!*

The Court of Appeals was evenly divided on the question of whether such an estate was created.

Matter of Klatzl, 216 N. Y. 83; 110 N. E. 181.

The presiding justice concurred in the result on another ground and one-half the real estate was held taxable on the husband's death.

In *Matter of Horler*, now pending on appeal to the Appellate Division, 97 Misc. 587; 161 Supp. 957, a wife deeded to her husband a one-half interest in her real estate with the intention of creating a joint tenancy in the whole with right of survivorship. The Comptroller contends, on appeal, that such a deed cannot create a common law estate under the common law rules as to unity.

The learned Surrogate, in discussing the *Klatzl* case, in his opinion in the *Horler* case, says:

“The Comptroller contends that the decision of the Court of Appeals in the *Matter of Klatzl* (216 N. Y. 83; 110 N. E. 181) is controlling on this point. In that case decedent who was seized of certain real estate, conveyed it to himself and his wife as tenants by the entirety. Three of the judges of the Court of Appeals held that the conveyance did not constitute a tenancy by the entirety, but that the husband and wife held as tenants in common, and that upon the death of the husband his wife took his undivided one-half under the provisions of his will. Three of the judges held that the conveyance did constitute a tenancy by the entirety, and that no part of the property was subject to taxation upon the death of the husband. The chief justice while holding that the wife took the property by virtue of the deed from her husband, held that her undivided one-half passed to her husband upon her death, and that that one-half was subject to a transfer tax. I do not understand the decision in *Matter of Klatzl* to go so far as to subject joint tenancies to the succession tax on the death of any joint tenant. In the matter under consideration there is little room for difference of opinion as to the character of the tenancy created by the conveyance from the decedent to her husband, as

it is expressly stated therein that the grantor conveys an undivided one-half interest in the premises to the grantee, and that it was her intention to create a joint tenancy in herself and her husband, with an absolute fee in the survivor. The facts in this matter, therefore, are different from those in the *Matter of Klatzl*."

The *Horler* case will be opened before the Appellate Division this fall (1917).

e. HOW TERMINATED.

Death terminates the estate by the entirety and transforms it to a sole estate.

So does divorce.

Stelz v. Shreck, 128 N. Y. 263; 28 N. E. 510.

In this case property had been deeded to husband and wife. Thereafter there was a divorce *a vinculo* for fault of the wife and the husband married a second time. On his death the first wife claimed the property as tenant by the entirety and the court held that as her title sprang not from contract but from marital relation that the divorce had destroyed the tenancy by the entirety.

The parties also by mutual agreement can sever the entirety under the New York Statute (Domestic Relations Law).

Sec. 56. HUSBAND AND WIFE MAY CONVEY TO EACH OTHER OR MAKE PARTITION.—Husband and wife may convey or transfer real or personal property directly, the one to the other, without the intervention of a third person; and may make partition or division of any real property held by them as tenants in common, joint tenants or tenants by the entireties. If so expressed in the instrument of partition or division, such instrument bars the wife's right to dower in such property, and also, if so expressed the husband's tenancy by courtesy.

This statute has been held not to abrogate the common law rules as to tenancy by the entirety.

Bertles v. Noonan, 92 N. Y. 152.

Zortlein v. Bram et al., 100 N. Y. 12; 2 N. E. 388.

f. EFFECT OF TAXING STATUTE.

New York adopted a statute taxing the transfer at the death of one tenant by the entirety in 1916, at the same time that it undertook to tax the transfer at the death of one joint tenant.

The Appellate Division, Second Department has clarified the obscurity left by the *McKelway* decision as to tenancies by the entirety and their taxation upon the death of one of the tenants under the amendment to the New York Statute in 1916, in *Matter of Moebus* decided July, 1917 (165 Supp. 887). After discussing the provisions of the statute and prior authorities the court says, by Judge Putnam:

“Hence we are brought to the final inquiry. Does the surviving tenant by the entirety in the state of New York acquire an interest that is taxable? Speaking of such estates with the original incidents, unaffected by the later statutes, it has been accurately said of such tenants: ‘Death separated them, and the survivor still held the whole because he or she had always been seized of the whole, and the person who died had no estate which was descendable or devisable.’

Stelz v. Shreck, 128 N. Y. 263.

“Notwithstanding this original peculiarity of title, the use and enjoyment now does undergo a decided change by the death of one spouse. By common law, the husband during coverture had the sole use or profits of this estate. But by reason of the married woman’s property acts in New York, each has now equal rights in the rents and profits, so long as the question of survivorship is in abeyance. (*Hiles v. Fisher*, 144 N. Y. 306; *Grosser v. City of Rochester*, 148 N. Y. 235; see also *Kip v. Kip*, 33 N. J.

Eq. 213.) The old idea that this estate is an unit made up of indivisible parts (*Stuckey v. Keek's Exrs.*, 26 Penn. St. 397, 339), is no longer true in New York. As to income its unity is gone. Indeed, the term 'entirety' has become inexact and perhaps misleading.

"With such a succession from the dead to the survivor as to one-half of the profits,—and profits represent the land's usable value,—it would seem strange if that succession could not be taxed.

"Where a joint bank deposit was in question in case of a husband's death in 1913, the court held such a joint tenancy not taxable under the language of that earlier statute, since such property thus disposed of is not 'made in contemplation of * * * death,' nor 'intended to take effect in possession or enjoyment at or after such death.' Mr. Justice Woodward, however, added: 'if the Legislature deems such dispositions of property to be properly taxable that is a question which may be dealt with in the proper department, but this court has no power to enlarge upon the scheme of tax laws. (See *Matter of Starbuck*, 137 App. Div. 866; *Matter of Green*, 144 id. 232-234, and authorities cited.'

Matter of Tilley, 166 App. Div. 240, 243.

"In *Matter of Klatzl* (216 N. Y. 83), the death was in 1913. In 1906, Klatzl had deeded a property in New York to himself and wife as 'tenants by the entirety,' which the surrogate held effective. The Court of Appeals (reversing the surrogate and Appellate Division), however, held the property taxable to one-half of its value, as, in the majority view, the conveyance created only a tenancy in common. Judge Bartlett concurred in the result, on the express ground that, even as tenants by the entirety, one undivided half of the profits to which the husband had been entitled during his life, passed into the wife's possession by the husband's death (p. 89).

“ Estates by the entirety, if wholly escaping the transfer tax, would be easily resorted to as a means to put valuable lands beyond taxation. This is a period when the taxing power is in full exercise, and seems to be required for the general welfare. The legislature has clearly enlarged the statute, so as to include the succession by survivorship to an estate by the entirety. Hence I advise to tax the lands held as tenants by the entirety (both strictly such, and the Yonkers land under contract of sale), for *one-half* their value. This also applies to the joint personalty, with the result that the value of the joint interest, appraised at \$64,811.89, should be halved, namely \$32,405.95, and as thus modified, the order of the Surrogate’s Court of Westchester county should be affirmed, without costs of this appeal.”

5. Joint Tenancy.

A devise to two or more persons will be construed as creating a tenancy in common unless expressly declared otherwise.

Matter of Eldridge, 29 Misc. 734; 62 Supp. 1026.

Where so expressly devised the bequest to the several joint tenants is taxable in equal proportions.

Matter of Sullivan, 94 Misc. 529; 159 Supp. 616.

The taxation of property held jointly, at the death of the joint tenants, has proved a vexatious problem. The first question arising is whether a joint tenancy has, in fact, been created; or whether the parties held as tenants in common — for joint ownership is held to be “ an object of disfavor.”

Overheiser v. Lackey, 207 N. Y. 229.

a. INTENT OF THE PARTIES GOVERNS.

This was well illustrated in a rather curious case. A marriage was void by reason of the fact that the husband had another wife living at the time of its solemnization; but they lived together for many years as man and wife.

He deposited money in their joint names and died. In holding that he intended to give his wife a right of survivorship in the joint account the court held that the intention which the law imputes to husband and wife who deposit moneys to their joint credit, that the money shall belong to the survivor, is founded not upon the legality of their marriage relation, but upon the impulses which it has been found ordinarily affect persons sustaining such a relation to each other.

Matter of Eysel, 65 Misc. 432; 121 Supp. 1095.

“The mere form of the account will not be regarded as sufficient to establish an intent on the part of the person making the deposit to give the individual whose name is associated with that of the depositor on the books of the bank or trust company a joint interest in the deposit, with the right of survivorship (*Matter of Bolin*, 136 N. Y. 177; 32 N. E. 626; *Farrelly v. Emigrant Ind. Sav. Bank*, 92 App. Div. 529; 87 Supp. 54, aff. 179 N. Y. 594; 72 N. E. 1141; *Slee v. Kings Co. Sav. Ins.*, 78 App. Div. 534; 79 Supp. 630).

Matter of Myers, 129 Supp. 194.

Where mortgages were assigned to decedent and another by instruments which contained provisions that the survivor of the two assignees should become the absolute owner of the bonds and mortgages and that neither should have power to affect the rights of the last survivor. It was held that one-half of the value of the bonds and mortgages was taxable upon the death of the decedent.

Matter of Spring, 75 Misc. 586; 136 Supp. 174.

Matter of Pitou, 79 Misc. 384; 140 Supp. 919.

Matter of Quinn, N. Y. L. J., Sept. 25, 1911.

In the case of *Kelly v. Beers*, 194 N. Y. 49; 86 N. E. 980, the court held that the circumstances of the case created a joint account with right of survivorship.

In *Matter of Heiser*, 85 Misc. 271; 147 Supp. 557, two

sisters held a large property as tenants in common and by contract in a series of conveyances changed their title to a joint tenancy. This was held to be a completed gift *inter vivos*.

In *Matter of Wilkens*, 144 App. Div. 803; 129 Supp. 600, there were deposits by husband and wife and it did not appear who made them. The court held that the presumption was that each had an equal interest.

In *Wetherow v. Lord*, 41 App. Div. 413; 58 Supp. 778, the court holds that a husband could not, as against his wife, make a gift of more than one-half of their joint account.

In *Matter of West v. McCullough*, 123 App. Div. 846; 108 Supp. 493, the court holds that the question of the right of survivorship in joint bank accounts is one to be determined by the intent of the parties.

In *Matter of Stebbins*, 52 Misc. 438; 103 Supp. 563, where money was deposited in joint names and the book read, "either or the survivor may draw," it was held that the survivor took free from the transfer tax.

But where it appeared that part of the money belonged to each at the time the deposit was made in the case of a similar account. The court held that such portion of the money deposited as did not belong to the survivor at the time the deposit was made was taxable.

Matter of Kline, 65 Misc. 445; 121 Supp. 1090.

For other decisions involving joint bank accounts see:

Matter of Durfee, 79 Misc. 655; 140 Supp. 594.

McElroy v. National Savings Bank, 8 App. Div. 192; 40 Supp. 340.

McElroy v. Albany Savings Bank, 8 App. Div. 46; 40 Supp. 422.

Hallenbeck v. Hallenbeck, 103 App. Div. 107; 93 Supp. 73.

Matter of King, 51 Misc. 375; 101 Supp. 279.

Kelly v. Albany Trust Co., 124 App. Div. 99; 108 Supp. 214.

Kelly v. Home Savings Bank, 103 App. Div. 141, appeal withdrawn, 182 N. Y. 568.

Matter of Meehan, 59 App. Div. 156; 69 Supp. 9.

Matter of Graves, 52 Misc. 433; 103 Supp. 571.

Moore v. Fingar, 131 App. Div. 399; 115 Supp. 1035.

b. SURVIVORSHIP NOT TAXABLE.

In this somewhat confused state of the authorities section 114 of the Banking Law was amended April 30, 1907, by chapter 247 N. Y. L. 1907, adding thereto the following clause: * * *

“ When a deposit shall be made by any person in the names of such depositor and another person and in form to be paid to either or the survivor of them, such deposit thereupon and any additions thereto made by either of such persons upon the making thereof shall become the property of such persons as joint tenants and the same, together with all interest thereon, shall be held for the exclusive use of the persons so named and may be paid to either during the lifetime of both or to the survivor after the death of one of them, and such payment and the receipt or acquittance of the one to whom such payment is made shall be a valid and sufficient release and discharge to said bank for all payments made on account of such deposit prior to the receipt of said bank of notice in writing not to pay such deposit in accordance with the terms thereof.”

This amendment came up for construction in *Matter of Tilley*, 166 App. Div. 240; 151 Supp 79; aff. 215 N. Y. 702. The court held that under this amendment the survivorship in such an account was not taxable, reasoning thus:

“ This would seem to dispose of the question here presented, for whatever may have been the intention of the decedent he is presumed to have known the law, and when he deposited the money's in the accounts now under consideration he vested the ownership of such funds in joint tenancy in himself and his wife; it became the property of such persons in joint tenancy; and it is of the essence of a joint tenancy that there shall be unity of interest, unity of title, unity of time, and unity of possession; that is to say, joint tenants have one and the

same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession. Neither can be exclusively seized of any particular part of the property, and is cotenant of the other, but each has an undivided moiety of the whole, and not the whole of an undivided moiety. (17 Am. & Eng. Ency. of Law [2d ed.], 649.) The great incident of joint tenancy is the right of survivorship, and by reason of this right the interest of a joint tenant is not descendible, and cannot be devised by will. (17 Am. & Eng. Ency. of Law [2d ed.], 650.) No right passes by the death of one of the parties, for where the deposit is in the joint names of the parties, and the intent appears — as it now must under the statute — to create the joint tenancy, its effect is to vest title in the entire fund in the survivor. (*Farrelly v. Emigrant Industrial Savings Bank*, 92 App. Div. 529, 531; 87 Supp. 54; *affd.*, 179 N. Y. 594; 72 N. E. 1141.) The right of survivorship vests at the creation of the joint tenancy, and the only question determined by death is which shall take the entire estate. Under such circumstances it is clear that there is no succession to be taxed, for it was not ‘made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.’ The possession is given upon the creation of the estate; the rights are absolutely and conclusively fixed, and the only question which is contingent is which of two or more joint tenants shall eventually own the entire estate. But each is in full possession, each has full ownership as against all the world, with the exception of the equal right of the other, and the transfer which becomes fully determined at the death of one of two joint owners relates back to the creation of the estate. It was then that the rights vested, and the death only determines which shall be the gainer by the transaction.”

Prior to this decision which, it will be observed, was founded on the provisions of the amendment to the banking law, the taking of mortgages or notes in joint names had always been regarded as a gift taking effect at death.

In the *Matter of Sanford v. Sanford*, 45 N. Y. 723, the court holds that if one, in loaning money, takes a promissory note therefor, payable to the order of himself and his wife, this imports a gift to the wife in case she survives him, and delivery of the note to her by the husband is not necessary to perfect the gift. During the husband's life such note remains subject to his control, and the wife has no legal interest therein until his decease. Judge Peckham says: "The note being payable to husband and wife jointly belonged to the wife as survivor. * * * Taking this note in the name of himself and wife shows that the husband intended thereby to give it to her in case she survived him, and a delivery to her was unnecessary to perfect the gift. Assuming this to be so, yet during the life of the husband the note is subject to his control and disposition. *The wife has no legal interest in it until his decease.*"

But following the *Tilley* case the New York courts went a step further and declared that all joint holdings escaped taxation at the death of one of the joint tenants. Ignoring the fact that the statute only concerned bank accounts the court held that where a husband loaned his own money and took mortgages in the joint names of himself and his wife there was no distinction in the rules to be applied between joint mortgages and joint bank accounts.

Matter of Thompson, 167 App. Div. 356; 153 Supp. 164; aff. 217 N. Y. 609.

And where a husband put stocks and bonds valued at upwards of \$100,000 in the joint names of himself and his wife and died soon after the transfer was held not taxable.

Matter of Dalsimer, 167 App. Div. 365; 153 Supp. 58; aff. 217 N. Y. 608.

The California Court followed the same line of reasoning as these New York cases:

“Mrs. Boyd did not take any interest in the deposits as heir of or successor to her deceased husband. She took by virtue her estate originating at the time of creation of the joint tenancies. The imposition of the tax cannot, therefore, be sustained upon the theory that the deposits formed part of the estate of Colin M. Boyd passing upon his death to his wife. Boyd died on March 13, 1912. The inheritance tax statute then in force was the act approved April 7, 1911, and this act did not undertake to impose a tax upon the right accruing to a surviving joint tenant on the death of his co-tenant.”

McDongald v. Boyd, 172 Cal. 753, 756; 150 Pac. 168.

In Massachusetts the doctrine was stated thus:

“The statute does not in express terms authorize the taxation of the interest accruing to a surviving tenant upon the termination of a joint tenancy by the death of his co-tenant. In England such interests are expressly made taxable by statute. St. 57 & 58 Vict., c. 30, Sec. 2 (d) xx. We think that the laws regulating the intestate succession mean the statute laws regulating the descent and distribution of intestate estates and do not include the succession of property which passes under the common law. Joint tenancies arise under the common law, and the doctrine of survivorship thereunder grows out of the application of common law principles wholly independent of statute. Joint tenants hold under the conveyance or instrument by which the tenancy is created.

Attorney-General v. Clark, 222 Mass. 291, 295; 110 N. E. 299.

This extreme doctrine had scarcely been promulgated when the New York Court of Appeals began to recede from it. Where stock was placed in joint names by one Dana to retain the services of one Seibert in the business

and a power of revocation and to vote the stock was reserved the court drew the line and held the succession taxable, stating its reason thus:

“ The suggestion which has been made that if we hold this transfer taxable we would have to hold the same as to all joint tenancies in personal property, or the further suggestion that if Seibert’s interest in this stock becomes taxable upon Dana’s death, if Seibert had died first, a like interest passing to Dana would have then been subject to taxation, is not correct. The latter could not be so, because Dana did not acquire his interest in the stock by ‘ gift ’ from Seibert, whereas Seibert did acquire his interest therein by ‘ gift ’ from Dana.”

Matter of Dana, 164 App. Div. 45; 149 Supp. 417; aff. 214 N. Y. 710.

It is difficult to reconcile the Dana, and Thompson and Dalsimer cases. The fact that the gifts were from husband to wife was not sufficient to alter the nature of the tenancy; and the fact, in the two latter cases, that the tenancy was created by *gift* was ignored.

No true common law joint tenancy can be created by gift because there is no unity of title. If the courts had consistently applied common law rules in dealing with common law estates the difficulties and confusions in which the whole subject became involved would have been avoided.

Nor does the reservation of a power to revoke afford the distinction because, by its very nature, a joint tenancy is always revokable by conveyance at the option of either joint tenant.

c. WHERE SUCCESSION IS SPECIFICALLY TAXED.

Estate attorneys have not been slow to take advantage of the loophole thus afforded and, on the other hand, legislatures have taken alarm at the escape of large properties from a tax that must reach all or be grossly unfair. In

California an amendment in 1915 declared that where a decedent has placed property in the joint names of himself and another without consideration it shall be deemed a transfer to take effect at death and be taxable accordingly. The Federal statute taxes the interest to which a surviving joint tenant succeeds.

The New York legislature went a step further. The courts had held that each joint tenant owned the *whole*, that death merely determined which should survive but did not alter the nature of the ownership and that therefore there was no tax. The legislature accepted the doctrine and taxed the *whole* property on the death of one joint tenant.

Chapter 664, L. 1915, provides as follows: "Whenever intangible property is held in the joint names of two or more persons, or as tenants by the entirety, or is deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased tenant by the entirety, joint tenant or joint depositor and had been bequeathed to the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, by such deceased tenant by the entirety, joint tenant or joint depositor, by will."

And this was copied by the California Statute of 1917.

d. CONSTRUCTION OF THE STATUTE.

Neither the Federal nor the California statutes have as yet been construed; but the New York act was open to

obvious objections and was at once attacked as unconstitutional and was so held by the lower courts, which were reversed on appeal in two recent cases as to half the property transferred, a decision which takes a long step towards judicial legislation.

In the *Matter of McKelway*, decided by the Court of Appeals May 8, 1917 (221 N. Y. 15, 116 N. E. 358), Judge Pound, writing for the court, said:

“ But joint ownership in personal property may be severed by the act of one in disposing of his interest. If the interest of one joint owner passes to a third party he and the other joint tenant become tenants in common. The doctrine of the survivorship applies only if the jointure is not severed. (Williams on Personal Property, pp. 302-306.) The undivided half of this joint property which Mr. McKelway might have effectually disposed of at any time during his life never passed into the absolute ownership of his wife until her husband's death. A transfer tax thereon does not diminish the value of a vested estate and is free from the objections to a tax on vested remainders and reversions as set forth in *Matter of Pell* (171 N. Y. 48; 63 N. E. 789) or to a tax on contingent remainders as set forth in *Matter of Lansing* (*supra*).

As to the one-half which Mrs. McKelway herself owned and had the right to dispose of, the rule of the *Pell* case must govern. She gained nothing in regard thereto by the death of her husband except as the *jus accrescendi* eliminated his interest. The right of the survivor of two joint tenants of personal property to the exclusive ownership thereof may be deemed a taxable transfer of one-half of the joint property but not to the whole. It is taxable only to the extent of the beneficial interest arising by survivorship, which is, as we have seen, the accruer by survivorship of the whole instead of the half. To this extent it was a property rightfully acquired only on survivorship, analogous to an interest created by a power

of appointment under a will executed prior to the enactment of the law taxing transfers, and, therefore, one that could be cut down by the imposition of an excise tax after the joint ownership began. (*Matter of Vanderbilt*, 50 App. Div. 246; 63 Supp. 1079; 163 N. Y. 597.) The imposition of such a tax violates no contract for neither joint tenant agrees not to terminate the joint tenancy. Mrs. McKelway had no contract with her husband as to the joint property which was not as ambulatory as a will to the last moment of Mr. McKelway's life and, for the purposes of taxation, she is deemed to have acquired his interest in the joint property by his death."

The decision in the *McKelway* case re-states the law as to joint tenancy and restores it to where it was before the Thompson and Dalsimer decisions, effecting substantial justice at the sacrifice of consistency. As Mr. Emerson says: "With consistency a great soul has simply nothing to do."

In *Matter of Teller*, decided by the Appellate Division, First Department, June 9, 1917, 165 Supp. 517, the opinion in the *McKelway* case was held to apply not only to joint estates created prior to the act of 1915; but to those created afterwards, as well. The court said:

"When this appeal was argued it seemed necessary to decide whether the ownership of the property was in the testator and his wife as tenants in common or jointly; but a decision of the Court of Appeals in *Matter of McKelway* on May 8th, 1917, I think, disposes of all the questions involved on this appeal. That proceeding involved the taxability of personal property held by McKelway and his wife jointly, some of which they acquired before and some after the enactment of this statute, and his death was subsequent to the time the statute took effect. There, as here, the tax appraiser ruled that the property was taxable for its full value as though it passed under the will, and the Surrogate's Court reversed the ruling on the

theory that the only transfer from McKelway was during his lifetime on the creation of the joint tenancy and before the enactment of the statute. The Appellate Division affirmed but the Court of Appeals reversed, holding that the property was taxable to the extent of one-half of its value, on the theory that a joint owner of *personal* property may dispose of his own interest during his lifetime, and that the doctrine of survivorship applies only if the jointure is not thus severed, and that, therefore, the absolute ownership of the undivided half of the joint property which the deceased joint owner might have disposed of passed to the survivor upon his death, and not until then. The effect of that decision is that the surviving joint tenant has at all times been the owner of an undivided half interest subject to the right of his cotenant to take by survivorship and that therefore that undivided interest was not taxable but that the survivor succeeds to the absolute ownership of the other undivided half interest only by and upon the death of his co-tenant, and that, therefore, such interest is taxable. On that construction of the statute no constitutional question arises, for it does not become retroactive; and since an undivided half interest would be taxable if they held the property as tenants in common the same result follows."

A motion for re-argument is pending before the Appellate Division in the *Teller* case on the ground that the *McKelway* case did not involve joint properties created subsequent to the statute.

6. Escheat.

Logically, if the state gets the whole, by escheat, no tax would be imposed—but it often happens that a county gets the funds derived from escheats in which case it must pay the state its inheritance tax.

People v. Richardson, 269 Ill. 275; 109 N. E. 1033.

This is in line with the Illinois doctrine that all common law transfers are covered by a general inheritance tax statute. There seems to be no other case on the subject.

Questions of escheat are often involved with those of presumption of death.

Where a public administrator had obtained letters of administration over an estate consisting of a savings bank account deposited in 1819, there is no presumption from the fact that this money had never been demanded that decedent died prior to the inheritance tax act of 1885. No proof was presented or could be discovered as to what had become of the woman but as there was no presumption of death there could be neither escheat nor inheritance tax although there were no known heirs.

Matter of Bernard, 89 Misc. 705; 152 Supp. 716.

The intestate, a native of Sweden, died on November 17, 1904, in the city of New York, leaving a small amount of money in a savings bank, and, so far as appears, no widow or next of kin in this state. Inquiry failed to disclose any knowledge of him, his family or next of kin. Letters of administration were issued to the public administrator, whereupon the Comptroller of the state of New York applied to the surrogate to have an appraisal of the property subject to a transfer tax.

It was held that there was no escheat but that the deceased was presumed to have next of kin. The court said:

“ * * *. Upon the death of the decedent his personal property vested in the administrator, and his next of kin were entitled to the property upon proving their relationship to the deceased. No such person has appeared and no such person has been found to be in existence. There has been no transfer ‘ dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged.’ *Matter of Vanderbilt*

(172 N. Y. 69; 64 N. E. 782) had relation to a trust estate in which the ultimate beneficiaries were uncertain, and what is said in that case relates to such an estate. The only uncertainty as to the ownership of this property depends upon the fact as to whether the deceased left next of kin. The presumption is that the deceased left next of kin, but there is no presumption that he left a widow or descendants. It is presumed therefore that the property vested in the next of kin of the deceased, and is therefore taxable under section 220 of the Tax Law, and as it does not appear that it is exempt under section 221 of the Tax Law, the tax imposed by subdivision 6 (now subd. 7) of section 220 applies, and it is taxable at the rate of five per cent.”

Matter of Lind, 132 App. Div. 321; 117 Supp. 49; aff. 196 N. Y. 570; 90 N. E. 1161.

As we have seen, a bequest to the government, which is in the nature of an escheat, is taxable, under state statutes.

United States v. Perkins, 163 U. S. 625; 16 S. Ct. Rep. 1073.

g. CIVIL LAW TRANSFERS.

Under the civil law the wife has a one-half interest in the gains or profits of the matrimonial partnership and succeeds thereto at her husband's demise, under an implied contract at marriage.

1. *Taxable.*

In California it was held that the wife succeeds as heir to her husband and that the transfer is taxable under the California inheritance tax law.

Estate of Moffit, 153 Cal. 359; 95 Pac. 653, sustained sub. nom. *Moffit v. Kelly*, 218 U. S. 400.

But the new California statute (See Appendix) in effect July 27, 1917, exempts a widow's community interest in her husband's property in all cases where death occurs subsequent to that date.

2. *Not Taxable.*

In Louisiana it is held that the succession is not as heir or under the intestate law and although the husband could defeat the wife's interest in his will as he did not do so the succession is not taxable.

The court said: "It is true that the right of *usufruct* which is vested in the surviving spouse is defeasible at the will of the deceased; but it is nevertheless a right confirmed by the law which enters into and forms part of the marriage contract and of which the survivor can be deprived by no one save the deceased spouse."

Succession of Marsal, 118 La. 212; 42 So. 778.

In Nevada and Idaho community interests are neither defeasible nor is the succession taxable.

William's Estate, (Nevada) 161 Pac. 741.

Kohny v. Dunbar, (Idaho) 121 Pac. 544.

3. *Gains Acquired in a Foreign Country Exempt.*

Still another view of the widow's civil law right to "*Gananciales*" or joint gains of the marriage is found under the laws of Cuba as applied by the courts of New York.

The Cuban courts held that the husband could not defeat his wife's right to joint gains by will and at her suit awarded her one-half of his property. The husband had become a citizen of the United States though neither he nor his wife actually resided here. By his will, drawn in English and probated in New York, he recited that he was a resident of New York and attempted to defeat his wife's right under the Cuban law. The New York courts followed the Cuban decision and allowed a deduction of one-half from all the husband's property within the state apparently on the ground that all the

property had been acquired in Cuba during the marriage and was merely sent to this country for investment.

Matter of Tirso Mesa y Hernandez, 172 App. Div. 467; 159 Supp. 59; aff. 219 N. Y. 24.

4. *Gains Acquired in this Country Taxable.*

Still another result was reached where a couple, citizens of France, emigrated to this country in 1885 and lived here until the husband's death in 1907 but never became citizens. All their property was acquired in this country.

The court said: "As to whether the community interest of a wife in the property of her husband under the French law is such as to constitute her the present and continuing owner during their married life of an undivided one-half interest in his personal property acquired during his residence in France we do not now deem it necessary to determine; for, as we understand, all of the decedent's property, both real and personal, of which he died seized or possessed, was acquired after the removal of himself and wife to this State. While it must be conceded that some conflict exists in the decisions of courts in foreign jurisdictions, we have no hesitancy in reaching the conclusion that as to the property acquired by the decedent here during his residence with his wife in this State, it is controlled by our laws and upon his death it is transferred within the meaning of our tax laws."

Matter of Majot, 199 N. Y. 29; 92 N. E. 402.

On this subject there is obviously confusion in the law which must be clarified by further legislation and litigation.

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PART III—THE PARTIES

A.—THE DECEDENT.

As far as inheritance tax laws are concerned with the decedent, apart from the property he left behind and the personal representatives who administer it, the question of his former residence is chiefly important. The tax is imposed as to residents upon all personal property wherever situated, while as to real estate only upon that within the state. Real estate therefor never pays but one state inheritance tax. The theory as to the personality is that "movables follow the person" and being intangible, have the situs of their owner. This theory though frequently repeated in sonorous Latin: "*Mobilia Personam Sequuntur*," in solemn adjudications, involves an inherent absurdity. The person in question being dead, his tangible assets must have "*sequunted*" to that "bourne whence no traveller returns." They may be stored where the "worm dieth not and the fire is not quenched" or they may have been wafted up the golden stairs and through the pearly gates; but in either case they would be beyond the reach of the tax collector.

The truth is that the entire personal estate is taxed at the last domicile because it is there that the entire personal estate is administered and is within the power of the court.

This view is not without authority to support it. The maxim, declared the Illinois Court "is the outgrowth of conditions that have long ceased to exist."

Davis v. Upson, 230 Ill. 327; 82 N. E. 824.

"It is a fiction due to historic conditions" declared Justice Holmes.

Blackstone v. Miller, 188 U. S. 189; 23 S. Ct. R. 277.

1. Residence and Domicile Synonymous.

The word "residence as used in the inheritance tax statutes is synonymous with domicile;" and although the statutes use the word "resident" the residence is determined by applying the principles relating to domicile.

People v. Moir, 207 Ill. 180; 69 N. E. 905.

Matter of Martin, 173 App. Div. 1; 158 Supp. 915. Appeal dismissed, 219 N. Y. 557; 114 N. E. 1071.

This is obviously just; for a man may have half a dozen residences and the estate of a decedent might be taxed as the estate of a resident in half a dozen states.

2. Rules as to Domicile.

The rules by which domicile is determined were well established before the inheritance tax statutes were generally enacted. They are:

- a. That a person must have a domicile somewhere.
- b. That he can have but one.
- c. That a married woman's domicile is that of her husband unless she lives apart from him and acquires a separate residence.
- d. That the domicile of origin is presumed to continue until a new one is acquired.
- e. That the burden of proof rests upon the party alleging a change of domicile.
- f. That to sustain this burden both a change of residence (factum) and intent to change the domicile (animus) must be shown.

"The existing domicile, whether of origin or selection, continues until a new one is acquired and the burden of proof rests upon the party who alleges a change. The question is one of fact rather than law and it frequently depends upon a variety of circumstances which differ as widely as the peculiarities of individuals."

Matter of Newcomb, 192 N. Y. 238; 84 N. E. 950.

“To effect a change of domicile for the purpose of succession there must be not only a change of residence but an intention to abandon the former domicile and acquire another as the sole domicile. There must be both residence in the alleged adoption domicile and intention to adopt such place of residence as the sole domicile. Residence alone has no effect per se, though it may be most important as a ground from which to infer intention. Length of residence will not alone effect the change. Intention alone will not do it, but the two taken together do constitute a change of domicile.”

Dupuy v. Wurtz, 53 N. Y. 556.

Domicile is always a question of fact.

Matter of Martin, 219 N. Y. 557; 114 N. E. 1071.

3. Applications of the Rules.

a. FACTUM WITHOUT ANIMUS.

Where a resident of Illinois had decided to remove from the state to the home of his daughter as soon as he had settled his business; but before he did so was taken ill and was removed to his daughter's home for care and medical treatment and died soon after, everything being left undisturbed at his old home,—held a resident of Illinois.

People v. Moir, 207 Ill. 180; 69 N. E. 905.

“The mere fact that a person who had resided chiefly in the city of New York having been left a bequest of household furniture leased a house in the City of London for the purpose of storing it did not make him a resident of England so as to exempt his estate from a transfer tax, especially when letters written shortly before his death show that he considered himself to be an American citizen and regarded New York as his home.”

Matter of Martin, 173 App. Div. 1; 158 Supp. 915. Appeal dismissed, 219 N. Y. 15; 114 N. E. 1071.

Where deceased had frequently declared that he regarded New York as his home though he lived in Paris the court said:

“ The fact that he resided in Paris most of the time from 1880 while important to be considered, certainly is not controlling, because domicile may exist without actual residence but never without intent.”

Matter of U. S. Trust Co. v. Hart, 150 App. Div. 413; 135 Supp. 81; aff. 208 N. Y. 617; 102 N. E. 1115.

So the residence of a “ commuter ” is held to be his country home in New Jersey.

Matter of McCullough, N. Y. L. J., Oct. 27, 1914.

b. ANIMUS WITHOUT FACTUM.

The deceased, an Episcopal Bishop in charge of the branch of the church in Mexico, described himself in his will as “ now in the City of New York but for many years a resident of Mexico.” After making the will he returned to Mexico and resumed his labors,—held not a resident of New York.

Matter of Riley, 86 Misc. 628; 148 Supp. 623.

The deceased several times prior to his death declared that he was a resident of Grand Island, Vermont, and the evidence showed that he intended to move there but he never actually did so. His brother owned a home there and died devising it to the decedent who made all preparations to go there and live but never went and died at his home in New York. Held a resident of New York.

Matter of Rutherford, 88 Misc. 414; 150 Supp. 734.

The will of the deceased was probated in Washington where she expressed her desire to reside. The court said: “ There is no doubt in my mind that Mrs. Morgan desired to have her legal domicile with all its advantages in Washington, D. C., and at the same time she wished to resume

her original residence in New York. There is very little contention as to the fact that Mrs. Morgan at the time of her death was actually physically resident in the City of New York and that her sojourns elsewhere were not in law tantamount to residence."

Matter of Morgan, 95 Misc. 451; 159 Supp. 105.

The deceased lived with his family in Cuba but to protect his property he fraudulently procured citizenship papers upon affidavits that he had lived in New York City for the necessary length of time. He drew his will in English and therein recited that he was a resident of New York and his will was probated in that state. He did all that a man could do to establish a "legal" domicile in New York without living there. Held a resident of Cuba. The adjudication as to citizenship could not be attacked and it was held that even though the deceased fraudulently established a domicile in New York for that purpose, his continued actual residence in Cuba changed it back to that domicile of origin after citizenship had been acquired.

Matter of Hernandez, 172 App. Div. 467; 159 Supp. 59; aff. 219 N. Y. mem.

So it was held that where testator had a home in New Jersey that he was a nonresident of this State, although he described himself in his will and codicils as a resident of the city and county of New York.

Matter of Rogers, 83 App. Div. 642; 82 Supp. 1113; affirming N. Y. L. J., Jan 24, 1903.

c. ANIMUS WITH FACTUM.

Deceased moved to France in 1905 and remained there until his death. There was no evidence of any intention to return. Held a nonresident.

Matter of Rothschild, 86 Misc. 364; 148 Supp. 368.

The deceased had been a resident of New York. For some years she was confined in an insane asylum in that state. In 1911 she was discharged and on the next day made a trust deed of her property reserving a life interest. She then went to California where she resided until her death, three years later. After her death the trust deed was set aside by the California court on the ground that the donor was insane when she made it. The state comptroller contended that if the deceased was not competent to make a deed she could not have the necessary intent to change her residence; but the Surrogate held to the contrary and was sustained on appeal.

Matter of Balch, 93 Misc. 419; 156 Supp. 1006; aff. 175 App. Div. 933.

Deceased had lived in an apartment hotel in New York City where his business was. In 1910 he bought land at Long Branch and began building a house. In April, 1911, he went to live with his son at Long Branch and did not return to New York until his death the following September. Held that the intent and act were sufficient to change his residence to New Jersey.

Matter of Wise, 165 App. Div. 420; 150 Supp. 782.

d. AS TO A MARRIED WOMAN.

When a wife, though not legally separated from her husband, had lived apart from him in West Virginia for 26 years and he never visited her save on the occasion of their daughter's marriage, and the husband lived in New York. Held that the wife had acquired a separate domicile and was a nonresident.

Matter of Crosby, 85 Misc. 679; 148 Supp. 1045.

e. AS TO A WIDOW.

“Marriage is an international institution and more than a contract. It is, as Lord Stowell said in *Dalrymple v.*

Dalrymple (2 Hagg. Con., 63), ‘*principium urbis et quasi seminarium reipublicæ.*’ Story confirms this conception of the marital relation (sec. 108, Conf. Laws; Wharton, Conf. Laws, sec. 127, and see *Hyde v. Hyde*, 1 P. & D., 130, 133). Consequently in all systems of law marriage creates a novel matrimonial domicile for the wife wherever her prior domicile may have been. At common law the matrimonial domicile of a wife is that of the husband at the time of her marriage (*Westlake, Priv. Internat. Law*, secs. 361, 366; *Whart. Conf. Law*, sec. 189; Dicey, Conf. Laws, p. 511; *Bentwich, Domicile*, p. 33; *Merrill, Conf. Law*, 68).

Whatever Mrs. Green’s domicile of origin, or her later imputed domicile of her father’s subsequent choice, may have been, it was fully supplanted by her matrimonial domicile which was Vermont (*Story, Conf. Laws*, sec. 46; *Wharton, Conf. Laws*, sec. 189; *Dicey, Conf. Laws*, pp. 640, 643; *Savigny, Priv. Internat. Law*, p. 56; *Dalhousie v. M’Doual*, 7 C. & F., 817; *Yelverton v. Yelverton*, 1 Sw. & Tr., 574; *Whitcomb v. Whitcomb*, 2 Cur., 351; *Hunt v. Hunt*, 72 N. Y. 217, 242).

“The husband of decedent lived at the matrimonial domicile prior to the time of his death, and there he died and was interred in the last resting place of his respected and respectable fathers. A widow, in the absence of adequate proof to the contrary, retains the last domicile of her husband. The Roman Law on this point, ‘*vidua mulier amissi mariti domicilium retinet*’ (D. 30, 1, 22), is cited by Story with express approval, and it is adopted in all countries without exception. It is needless to enlarge on a proposition so universally accepted in all systems of law.

“That a widow being again *sui juris* and no longer in law or in fact *sub potestate viri* may change her domicile (*Gout v. Zimmerman*, 5 N. C., 440; *Warrender v. Warrender*, 2 C. & F., 488) is not now questionable.”

Matter of Hettie Green, 99 Misc. 582; aff. — App Div. —, without opinion, June 30, 1917.

f. AS TO AN ARMY OFFICER.

The late General Frederick Dent Grant had his domicile for many years in New York City where he held public office. He then returned to the United States army. It had been a rule that one cannot gain or lose a residence while in the army or navy. Thereafter the General had his headquarters at the Federal station on Governor's Island in New York harbor, where he lived with his family. He was about to retire, intended to buy a house at Washington, D. C., and had shipped some of his furniture and his uniforms thither. While on his way to Washington he was taken ill and died at a hotel in New York City. The court said:

“ When General Grant gave up his home in New York City and took up his permanent and only residence with his entire family at his headquarters at Governor's Island he was thereafter actually living in Federal territory. In the judicial determination of the last domicile of a general officer in the regular military service of our Federal government many things are entitled to consideration which would not be pertinent to a determination of the domicile of a civilian. The private courts of all the great nations do, I think, recognize a distinction in their application of the principle of domicile to the military status. I am quite aware that it is now a general rule that a soldier does not acquire a domicile in the place where he is stationed, but this is not to say that an American officer may not acquire a domicile in Federal territory of the United States if his actual residence in such federal territory is coupled with *animus manendi* there after his duty expires. The ordinary modern rule — that a soldier does not change his domicile by foreign service — is in any event a mere presumption which may be rebutted in any case; it is not properly a rule of law.”

Ames v. Duryea, 6 Lans. 155; aff. 61 N. Y. 609.

Matter of Grant, 83 Misc. 257; 144 Supp. 567; aff. 166 App. Div. 921; 151 Supp. 1119.

g. THE BURDEN OF PROOF.

The burden of proof rests upon the party asserting change of domicile.

Heaton on Surrogate's Courts, 3d Ed., p. 78.

So, where the deceased lived part of the time in New York and part of the time in Bermuda and made conflicting statements as to his intent, the court said: "It appears that the decedent in or about 1904 acquired a domicile of choice in the state of New York. This being so the onus of proving a change a domicile is upon those asserting it. The burden has not been sustained; and, therefore, the last established domicile of choice is presumed to continue."

Matter of Norton, 96 Misc. 152; 159 Supp. 619; aff., no opinion, — App. Div. —; 162 Supp. 1133.

The decedent had a house on Fifth Avenue where he lived with his wife until her death in 1905. After that he traveled much. He swore off his personal taxes in New York and made conflicting statements as to his residence on various occasions. He had a farm in Kentucky and was building a summer home at Easthampton. He was seldom at his house in New York which was occupied by members of his family occasionally and was in charge of a caretaker. All this was held insufficient to sustain the burden of proof required to show a change of domicile.

Matter of Harkness, N. Y. L. J., Feb. 17, 1917.

h. CONSTRUCTION AS AFFECTED BY STATUTE.

So many important estates escaped taxation because the decedent while doing business in New York or coming there for pleasure maintained a "domicile" in another state that an attempt was made by Chapter 551, L. 1916, to declare that a person should be "deemed" a resident. "If and when such person shall have dwelt or shall have

lodged in this state during and for the greater part of any period of twelve consecutive months in the 24 months next preceding his or her death.”

This section came before the New York Surrogate's Court for construction in the *Matter of Hettie R. Green* (*supra*), where the amount of tax sought to be collected by the state comptroller is \$5,000,000,—an amount equal to one-fifth of all the inheritance taxes collected by all the states in 1913.

The evidence showed that the twenty-four months immediately prior to her death she spent approximately as follows: She left New York City for Bellows Falls early in July, 1914, and remained there until about August 18; she returned to New York City on August 18, 1914, and stayed here until about July, 1915; from July 20 to September 1, 1915, she stayed at Bellows Falls and vicinity; she returned to New York about September 1, 1915, and stayed here until about October 1, when she went to Hoboken and remained there until November 24, 1915; from November 24, 1915, until the date of her death, July 3, 1916, she stayed in New York City.

The comptroller contended that this brought the case squarely within the statute, but the learned surrogate of New York County held otherwise. In the course of his opinion he said:

“ I cannot, however, agree with the contention of the state comptroller that the Legislature by the amendment above quoted intended that a person who dwelt or lodged here for a period of six months and one day of the twenty-four months immediately preceding such person's death is to be deemed a resident of this state for the purpose of the transfer tax. Such an interpretation would result in such manifest injustice that I should be unwilling to accept it, unless the words of the statute were so clear and unequivocal as to admit of no other interpretation. It

would, for instance, make a person a resident of this state and his estate subject to taxation as such, if he lived here for six months and one day and then sold his home here, bought a home in New Jersey and went immediately to live in the New Jersey home and lived there until the date of his death, seventeen months and twenty-nine days afterwards. I will not, therefore, assume that the Legislature intended the effect which would necessarily result from the interpretation contended for by the state comptroller. I think that the use of the word "consecutive" shows that it was the intention of the Legislature to make it essential that a person live in this state some part of each of twelve consecutive months, and in the aggregate the greater part of such twelve months of the twenty-four immediately prior to his death before he would be deemed a resident for the purpose of the Transfer Tax Act. As the statute was not intended to apply to a case where the residence of the decedent was not in dispute, but only to those cases where it was contended on behalf of the estate of a decedent that he was a nonresident, this interpretation would apply only to cases where the question of residence was in dispute, and as the Legislature makes the legal effect of the facts conclusive upon the question of residence, I am inclined to that interpretation which bears less heavily upon the taxpayer."

Matter of Green, 99 Misc. 582; aff. without opinion, — App. Div. —, June 30, 1917.

B.— BENEFICIARIES GENERALLY.

1. As to Domicile or Residence.

In practice, inheritance taxes have never yet, in this country, been imposed upon beneficiaries of a nonresident decedent merely because they were domiciled within the state and there are authorities to the effect that the state has no power to impose such a tax.

State v. Brim, 57 N. C. 300.

Where the testator was a resident the court said:

“ The property was within this state and the transfer was by a resident. The nieces take the remainders in possession or enjoyment under the laws of this state and under an instrument made here. It is not important, therefore, whether they now reside here or elsewhere.”

Matter of Green, 153 N. Y. 223, 228; 47 N. E. 292.

Obviously, however, if the tax is on the right to receive, the resident legatees of a nonresident testator might be subject to the tax. This was pointed out in *Bittinger's Estate*, 129 Pa. St. 338, 345; 18 A. 132, where the court said:

“ It may be that the state might impose a succession tax upon every citizen of the state who succeeds to either real or personal estate from whatever source received.”

And the reasoning of the court in *People v. Griffith*, 245 Ill. 532; 92 N. E. 313, would seem to be in accord with the theory.

In practical application, however, the residence of the beneficiary is regarded as of no importance and the fact that a resident is executor of a nonresident's estate does not make that estate taxable.

Commonwealth v. Peebles, 134 Ky. 121; 119 S. W. 774.

2. Relationship to the Decedent.

a. ADOPTED CHILDREN.

As we have seen the tax is almost universally apportioned to bear more heavily on distant relatives and strangers. Much litigation has arisen over the adoption or mutual acknowledgment of a child.

The adoption need not be under the laws of the state but must be in conformity with them.

Matter of Butler, 58 Hun 400; 12 Supp. 201; aff. 136 N. Y. 649; 32 N. E. 1016.

Where the statute required that both parents of the child must be dead before it could be adopted by mutual acknowledgment; held, that adopted nieces whose mother was living must pay at the 5 per cent rate.

Matter of Bolton, 210 N. Y. 618; 104 N. E. 1127.

A grandniece proved to have been adopted by mutual acknowledgment is taxable as a child.

Matter of Kirtland, 94 Misc. 58; 157 Supp. 378.

The court holds that the mutually acknowledged relation of parent did not exist where children lived with their uncle and aunt, and always referred to them as uncle and aunt, and the latter referred to the former as niece and the terms father, mother or daughter were never used.

Matter of Deutsch, 107 App. Div. 192; 95 Supp. 65.

The mere fact that the testator lived with his sister and her children as one family, that the household expenses were met out of a common fund to which each contributed, and that the sister died, and from that time one of the children had charge of the household affairs and they continued to live together as one family down to the death of the testator, and that the testator was very affectionate with his nieces, is not enough to show the mutually acknowledged relation of a parent, as the testator did not take them into his family and support, educate and maintain them.

Matter of Moulton, 11 Misc. 694; 33 Supp. 578.

Where there was a bequest of a life estate to a nephew with a remainder over in case he left "no children him surviving" and the nephew adopted a child it was held

that such child could not be deemed the child of testator's nephew so as to defeat the rights of the remaindermen.

Matter of Leask, 130 App. Div. 898; 197 N. Y. 193; 80 N. E. 652.

The proceeding of adoption and the relation established is personal to the foster parent and the child. The statute gives to them all the rights to be derived from the legal relation of parent and child, including the "right of inheritance *from each other*." The right is not given, however, either expressly or by implication, to the child, to inherit *through* the foster parent from his collateral kin. In other words, the child becomes heir only to the foster parent. But a stranger to the adoption proceedings, who has never recognized the existence of any artificial relation, should not have his property diverted from the natural course of descent.

Kettell v. Baxter, 50 Misc. 428; 100 Supp. 529.

It was held in a recent New York case that the word "sister" was not intended to include a person adopted by decedent's parents. Robert Benson described Miss Browne in his will as his niece. She was the grandchild of his mother to whom she stood in the mutually acknowledged relation of an adopted daughter. It was held, however, that this act of the mother's did not make her a sister of the decedent by adoption.

Matter of Benson, N. Y. L. J., Feb. 3, 1917.

Where a legatee was an orphan and had lived in a family of the testator since the age of six years, and was always treated like one of the family, she is one to whom the testator stood in the mutually acknowledged relation of a parent, although she was designated by the will as a "friend" and not a "daughter."

Matter of Wheeler, 1 Misc. 450; 22 Supp. 1075.

The mutually acknowledged relation of parent was found to exist where the niece when twenty-two years old had gone to live with her aunt, was a member of the family for twenty-eight years, and always addressed her as "Auntie"; and where during her residence there the niece married and with her husband continued to live with her aunt, the testatrix, who supported the household.

Matter of Spencer, 4 Supp. 395.

The statutes usually provide that the relationship must be begun before the tenth birthday so that the above case will seldom prove authoritative.

Where a maiden aunt was in possession of a farm as a housekeeper as tenant in common with her adult nephews, the acknowledged relation of parent was not found in

Matter of Sweetland, 20 Supp. 310.

The fact that the beneficiaries were taken into their testator's family in their infancy, were reared, educated and provided for as children, were called by her name and adopted the same, and were treated as her children, and that the testatrix spoke of and to them as her daughters and furnished them on their marriage with their wedding and outfit as is customary, is sufficient to bring them within the words of the statute.

Matter of Nichol, 91 Hun, 134; 36 Supp. 538.

Stepdaughters of a testatrix who had lived with her for a long time and called her "mother" were found to stand in the mutually acknowledged relation of parent, while another stepdaughter who was married and did not live with her did not come within that class, in

Matter of Capron, 10 Supp. 23.

The court said in the *Matter of Butler*: "The word 'mutual' in this statute has no abstruse signification. It

means and requires reciprocity of action, correlation, and interdependence, and finds its best illustration and application in the relations existing between parents and children which are always mutual.”

Matter of Butler, 58 Hun, 400, 12 Supp. 201; aff. 136 N. Y. 649; 32 N. E. 1016.

To the same effect is:

Matter of Stilwell, 34 Supp. 1123.

b. OTHER RELATIONSHIPS.

The child of an adopted child is a “lineal descendant.”

Winchester's Estate, 140 Cal. 468; 74 Pac. 10.

Matter of Cook, 187 N. Y. 253; 79 N. E. 991.

Step children are not included in the word “children” in a statute and are not so classed unless proved to have been adopted.

Matter of Wheeler, 115 App. Div. 616; 100 Supp. 1044.

Matter of Hardner, 124 App. Div. 77.

Children of an illegitimate daughter are not “lineal descendants,” though born in lawful wedlock.

Matter of Roebuck, 79 Misc. 589; 140 Supp. 1107.

Matter of Beach, 154 N. Y. 252; 48 N. E. 516.

The word children may be held to include grandchildren.

Matter of Bender, 44 Misc. 79; 89 Supp. 731.

Or to exclude them, according to the intent of the testator.

Matter of King, 217 N. Y. 358.

The widow of an adopted son is “widow of a son.”

Matter of Duryea, 128 App. Div. 205; 112 Supp. 611.

But a divorced wife of a son is not.

Matter of Merritt, 155 App. Div. 228; 140 Supp. 13.

If, however, the wife procured a divorce in another state on grounds other than adultery her rights are not affected.

Van Blarican v. Larson, 130 Supp. 925.

The widow of a deceased legatee is not entitled to share in the legacy her husband would have taken had he been living at the time of the payment thereof, since the primary meaning of the phrase "next of kin" includes neither a widow nor a husband.

Matter of Devoe, 171 N. Y. 281; 63 N. E. 1102.

Where a will provided that the residue should be "equally divided among and paid to the persons, entitled thereto as their, or either of their, next of kin, according to the laws of New York, and as if the same were personal property and they or either of them had died intestate." Held, that the widow was not entitled to any portion of said residue.

Murdock v. Ward, 67 N. Y. 387.

Where will gave all decedent's property "to those persons, relatives of my full blood only, who would be entitled to receive my personal estate in case of my death unmarried and intestate," a nephew of testator, who was also a stepson, was taxed as a nephew and not as a stepson.

Matter of Linkletter, 134 App. Div. 309; 118 Supp. 878.

A legacy to the husband of a daughter was held exempt under an early statute although the daughter died before the testator.

Matter of Woolsey, 19 Abb. N. C. 232.

Matter of McGarvey, 6 Dem. 145.

And this was so even if the husband remarried prior to the transfer to him.

Matter of Ray, 13 Misc. 480; 35 Supp. 481.

3. Personal Exemptions.

Most of the statutes allow an exemption of \$5,000 or more on bequests to near relatives and from \$500 to \$1,000 to collaterals and strangers. Though the law makers often use language inexcusably obscure these are generally construed to apply to each beneficiary unless specifically declared otherwise.

McDaniel v. Hearn, 120 Ark. 288; 179 S. W. 337.

Prior to the New York amendment of 1915 and under Chapter 732, L. 1911, property passing by gift in contemplation of death was regarded as a distinct transfer from the bequests under the will. This resulted in a second exemption to the same beneficiary and the graded rates were fixed as though there were two distinct estates.

Matter of Hodges, 215 N. Y. 447; 109 N. E. 559.

The same rule was applied to transfers by trust deed reserving a life estate but no power of revocation.

Matter of Meserole, 98 Misc. 105; 162 Supp. 414.

It was held to apply to all transfers not by will or intestacy.

Matter of Hermann, N. Y. L. J., Jan. 16, 1915; aff. 168 App. Div. mem.; 153 Supp. 1119.

Although the tax was to be assessed in one proceeding at the death of the donor or grantor.

Matter of Leeds, N. Y. L. J., April 23, 1913.

But this rule was limited by the Court of Appeals to transfers by deed, as in the Meserole case and transfers in contemplation of death, which accrue prior to the death of the testator. So, where property passed by will which also exercised a power of appointment; held, that the exemption and graded rates were to be fixed on the basis of one transfer only — not on two.

Matter of Winthrop, 164 App. Div. 898; 148 Supp. 1151; aff. 214 N. Y. 712.

The same ruling was made where there was a gift to take effect at death.

Matter of Dana, 215 N. Y. 461.

Where there is a devise to remaindermen as a class but one exemption is allowed under the New York rule for taxation at the highest possible rate.

Matter of Hogg, 156 App. Div. 301; 141 Supp. 119.

And where remaindermen who may possibly succeed have already received an exemption under bequests received from other provisions of the will no exemption is allowed as it may turn out there will be none in addition to that already received.

Matter of Coutts, N. Y. L. J., Dec. 15, 1914.

For further discussion of taxation at highest possible rate see *Remainders Post* p. 199.

The New York Statute now gives each beneficiary but one exemption no matter whether the transfer was partly by will and partly by trust deed or gift in contemplation of death. Ch. 664, L. 1915.

When the legatee receives both a legacy presently payable and an interest in remainder the exemption is pro rata.

Matter of Title Guarantee & Trust Co., 81 Misc. 106; 142 Supp. 1070; mod. on another point, 159 App. Div. 803.

4. Exemptions to Charities.

These must be specified in the inheritance tax statute, they are never implied.

Leavell v. Arnold, 131 Ky. 426; 115 S. W. 232.

Miller v. Commonwealth, 27 Gratt. (Va.) 110.

They depend upon the language of the particular statute and the statutes in this respect are so frequently amended

that a citation of authorities is more apt to confuse than instruct. A few general principles seem fairly well established.

a. CHARTER POWERS THE TEST.

In order to determine the status of a corporation and to ascertain the purposes for which it was incorporated, recourse must be had to the act by which it was incorporated or to its charter and the statute under the authority of which it was framed.

Matter of Watson, 171 N. Y. 256; 63 N. E. 1109.

Matter of White, 118 App. Div. 869, 870; 103 Supp. 688.

Matter of Moses, 138 App. Div. 525; 123 Supp. 443.

Matter of DePeyster, 210 N. Y. 216.

The application of this principle was strikingly illustrated in the recent decision of the New York Appellate Division in *Matter of Rockefeller*, — App. Div. —; 165 Supp. 154. Laura S. Rockefeller, the deceased wife of John D. Rockefeller, devised, through trustees, \$438,000 to the Rockefeller Foundation, and it was claimed by the Comptroller that moneys of that Foundation are not in fact applied to purposes exempt from taxation within the intent of the statute, but are used to influence legislation and in other ways of doubtful public policy. In sustaining the exemption of this bequest from taxation, the court said, through Mr. Justice Page:

“The Rockefeller Foundation was incorporated by a special act of the Legislature (Laws 1913, Chapter 488) ‘for the purpose of receiving and maintaining a fund or funds and applying the income and principal thereof to promote the well-being of mankind throughout the world. It shall be within the purposes of said corporation to use as means to that end research, publication, the establishment of charitable, benevolent, religious, missionary and public educational activities, agencies and institutions, and

the aid of any such activities, agencies and institutions already established, and any other means and agencies which from time to time shall seem expedient to its members and trustees.' Section 3 of said Act provides 'No officer, member or employee of this corporation shall receive or be lawfully entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of its purposes, or as a proper beneficiary of its strictly charitable purposes.' Upon the hearing before the appraiser the Rockefeller Foundation claimed that the legacy to it was exempt from taxation, and put in evidence its charter and an affidavit of its secretary, 'That ever since the corporation was organized and up to the present time, said corporation has been engaged exclusively in carrying out its strictly charitable and benevolent purposes. * * * That no officer, member or manager of said corporation receives or has received any pecuniary profit from the operation thereof. That the only persons who now receive or who have received any compensation or pecuniary profit whatsoever from the operations thereof are hired assistants and clerks, who receive reasonable compensation for the services performed by them for said corporation.'

"It is well settled that the character of a corporation may be determined by its charter. (*Matter of White*, 118 App. Div. 869, 103 Supp. 688: *Matter of Mergentime*, 129 id. 367, 374, 113 Supp. 948, affd. 195 N. Y. 572: *Matter of Loeb*, 167 App. Div. 588, 589, 152 Supp. 879: *Matter of DePeyster*, 210 N. Y. 216, 219.)

"The character of this corporation is shown from its purposes as stated in its charter: 'For the purpose of receiving and maintaining a fund or funds, and applying the income and principal thereof to promote the well-being of mankind throughout the world.' What follows relates to the means of accomplishing that purpose. The test of

a charitable gift or use and a charitable corporation are the same. (*Matter of Altman*, 87 Misc. 256, 260; 149 Supp. 601.) The former has been thus defined ‘ a charitable use, where neither law or public policy forbids, may be applied to almost anything that tends to promote the well doing and well being of mortal man.’ (*Ould v. Washington Hospital*, 95 U. S. 303, 311; *Tilden v. Green*, 130 N. Y. 29, 46; 28 N. E. 880.) Our Court of Appeals has recently said: ‘ Many definitions of a charitable trust have been formulated, but all definitions that have been attempted carry the implication of public utility in its purpose. * * * If the purpose to be attained is personal, private or selfish, it is not a charitable trust. Where the purpose accomplished is that of public usefulness, unstained by personal or selfish considerations, its charitable character insures its validity.’ (*Matter of McDowell*, 217 N. Y. 454, 460.) In its popular acceptance a charitable corporation is one that freely and voluntarily ministers to the physical needs of those pecuniarily unable to secure for themselves, while a benevolent corporation is one that ministers to all, and the purpose may be anything that promotes the mental, physical or spiritual welfare of man. Considered in the light of the legal definitions above set forth, the Rockefeller Foundation is a charitable corporation, while considered in the popular meaning of the words it is both charitable and benevolent in its purposes.

“ If, as claimed by the Comptroller, some of the funds of the corporation have been used by it for uses foreign to its corporate powers, or if it has exceeded its corporate powers in assuming to act as trustee for other charities, this would not affect its status as a charitable and benevolent corporation unless these uses were for the purpose of the personal enrichment of its officers or members. If these acts were *ultra vires*, on a proper application by the Attorney-General, the power of the Supreme Court over

such corporation could be invoked, and the trustees called upon to account. But such matters are not within the jurisdiction of the Surrogate's Court, nor do they properly arise in a transfer tax proceeding."

* * * The court concludes: "It has been the settled policy of the State of New York to encourage the benevolently inclined to dedicate a portion of their property to charitable and benevolent purposes for the relief of the sick or distressed, the amelioration of the condition of the unfortunate or the advancement of the physical, mental or spiritual well being of its inhabitants, and to that end to free the property thus dedicated, so long as it shall be used for those purposes from taxation. The Transfer Tax Law, in harmony with this general purpose has provided that bequests, devises and gifts to take effect after the death of the testator or donor shall not be diminished by a tax upon the transfer to the charitable or benevolent corporation. The decision of the learned surrogate was right and the order should be affirmed with costs."

b. PURPOSES MUST BE BROUGHT WITHIN THE LANGUAGE OF THE STATUTE.

Matter of Daly, 79 Misc. 586; 141 Supp. 199; aff. 215 N. Y. mem.

And burden of proof is on the corporation claiming exemption.

Matter of Townsend, 215 N. Y. 442.

Where the court said: "The respondent, having been duly served with the notice of the hearing before the appraiser and having failed to appear in response thereto, the appraiser had jurisdiction of the proceeding, and upon the record then before him could not do other than determine the tax payable upon the legacy to respondent. The title of respondent, 'The New York Exchange for Woman's Work,' was not notice to him that the corpo-

ration was one entitled to exemption, and even did the name indicate that the corporation might be charitable in its purpose, he would not be justified therefrom in assuming the other facts required by statute to secure the benefits of exemption from taxation. Neither is it incumbent upon an appraiser to devote the time necessary to investigation of corporate legatees under wills in order to ascertain the status of the same. It was the duty of the respondent to appear before the appraiser and the burden was upon it to produce evidence to show that it was entitled to exemption."

But when the purpose is clearly benevolent and the charter brings the case within the statutory provision the corporation is exempt from the tax.

Matter of Loeb, 167 App. Div. 588; 152 Supp. 879.

Exemption from general taxation does not exempt from transfer tax.

Matter of McCormick, 206 N. P. 100; 99 N. E. 177.

Matter of Saunders, 77 Misc. 54; 137 Supp. 438; aff. 211 N. Y. 541.

But until such corporation is formed the title to the bequest is in the trustees and the tax must be assessed against them, subject to a motion to modify the order or refund the tax, if paid, when the corporation is formed and the funds turned over to it for the charitable purposes of the testator.

Matter of Robinson, 80 Misc. 458; 142 Supp. 456; aff. 212 N. Y. 548.

Matter of Cary, N. Y. L. J., Jan. 20, 1914.

Matter of Neustadter, N. Y. L. J., Aug. 16, 1913.

This was the practice recently adopted in New York on motion to modify the order taxing the transfer to trustees who subsequently turned over the bequest to the exempt corporation.

Matter of Telefeyan, N. Y. L. J., Jan. 31, 1917.

Such a corporation, so formed, is not bound by the original appraisal because no notice thereof was or could be served on it.

People v. Kellogg, 268 Ill. 489; 109 N. E. 304.

On the other hand the accumulations of the fund in the interim between the death of the testator and the formation of the corporation cannot be held for its benefit. That is the general rule and is forbidden by statute in New York. Such accumulations pass under the will to the residuaries or, if the will is silent, under the intestate laws. Whether or not they are taxable as a transfer from the decedent to such beneficiaries remains a nice question. Although such accumulations accrue after death they relate back to the will or pass by intestacy and do not go to the alternative legatee.

St. John v. Andrews' Institute, 191 N. Y. 254; 83 N. E. 981.

Under the New York Constitution the Legislature may exempt a charitable bequest retroactively.

Church of Transfiguration v. Niles, 86 Hun, 221; 33 Supp. 944.

Under a similar provision of the California Constitution forbidding the giving away of money of the state it is held that such legislation is void.

Matter of Stanford's Estate, 126 Cal. 112; 54 Pac. 259; 58 Pac. 462.

Prior to N. Y. Statute 732, L. 1911, bequests to foreign charitable corporations were taxable.

Matter of Julia A. Smith, 77 Hun, 134.

Matter of Prime, 136 N. Y. 347; 32 N. E. 1091.

Matter of Wolfe, 52 Supp. 415; 23 Misc. 439.

Matter of McCartin, N. Y. L. J., Dec. 5, 1913.

Matter of Crittenton, N. Y. L. J., April 5, 1911.

Since that enactment such bequests have been exempted.

Matter of Lyon, 144 App. Div. 104; 128 Supp. 1004.

c. BEQUESTS HELD EXEMPT.

Generally the courts have favored exemptions to charitable institutions, though theoretically construing the statutes strictly against them. Under the language of the specific statute in question and the particular articles of incorporation of the beneficiary the following bequests have been held exempt:

To American Baptist Foreign Missionary Society (subsequent to 1911):

Matter of Lyon, 144 App. Div. 104; 128 Supp. 1004.

To an art gallery:

Matter of Arnot, 203 N. Y. 627.

To a bishop:

Matter of Higgins, N. Y. L. J., Dec. 16, 1914.

Matter of Kelly, 29 Misc. 169; 60 Supp. 1005.

Matter of Palmer, 33 App. Div. 307; 53 Supp. 847; aff. 158 N. Y. 669; 52 N. E. 1125.

To Congregational and Baptist churches:

Carter v. Eaton, 75 N. H. 560; 78 A. 643.

To First Universalist Society:

First Universalist Society v. Bradford, 185 Mass. 310; 70 N. E. 204.

For Masses:

Matter of McAvoy, 112 App. Div. 377; 98 Supp. 437.

To Methodist church:

Carter v. Whitcomb, 74 N. H. 482; 69 A. 779.

To New York Metropolitan Museum:

Matter of Mergantime, 129 App. Div. 367; 113 Supp. 948; aff. 195 N. Y. 572; 88 N. E. 1125.

To public officers as trustees for charitable purposes:

In re Spangler, 148 Ia. 333; 127 N. W. 625.

To a village in trust for indigent women:

Matter of Albright, 93 Misc. 388; 156 Supp. 821.

To found a home for the aged:

Matter of Graves, 171 N. Y. 40; 63 N. E. 787.

For a drinking fountain for horses:

Matter of Graves, 242 Ill. 212; 89 N. E. 978.

To a library:

Essex v. Brooks, 164 Mass. 79; 41 N. E. 119.

To a university:

Alfred University v. Hancock, 69 N. J. Eq. 470; 46 A. 178.

To hospitals:

Matter of Higgins, 55 Misc. 175; 106 Supp. 465.

Matter of Howell, 34 Misc. 40; 69 Supp. 505.

To a Masonic lodge:

Matter of Woolsey, N. Y. L. J., June 5, 1915.

Matter of Allen, 76 Misc. 88; 136 Supp. 327.

Morrow v. Smith, 145 Ia. 514; 124 N. W. 316.

To W. C. T. U.:

Matter of Field, 71 Misc. 396; 130 Supp. 195.

To Y. M. C. A.:

Matter of Moses, 138 App. Div. 525; 123 Supp. 443.

Little v. Newburyport, 210 Mass. 414; 96 N. E. 1032.

d. BEQUESTS HELD TAXABLE.

On the other hand, under the particular statute in force at the date of the death of the testator and the articles of incorporation in question these bequests for charitable or allied purposes have been held taxable:

To foreign religious corporations, in New York (prior to 1911):

Matter of Ballies, 144 N. Y. 132, 38 N. E. 1007.

To New York Cooper Union (1901):

Matter of Kucielski, 144 App. Div. 100; 128 Supp. 768.

To United States government:

Matter of Merriam, 141 N. Y. 479; 36 N. E. 505; aff. 163 U. S. 625; 16 S. Ct. Rep. 1073.

To Society for Prevention of Cruelty to Animals* (prior to 1912):

Matter of Daly, 79 Misc. 586; 141 Supp. 199; aff. 215 N. Y. mem.

To New York Historical Society:

Matter of DePeyster, 210 N. Y. 216.

To a library (under N. Y. Statute of 1905):

Matter of Francis, 121 App. Div. 129; 105 Supp. 643; aff. 189 N. Y. 554; 82 N. E. 1126.

To McAuley Water Street Mission:

Matter of White, 118 App. Div. 869; 103 Supp. 688.

To Home Missionary Society (N. H. Statute 1905):

Carter v. Whitcomb, 74 N. H. 482; 69 A. 779.

To Trinity College (N. Y. Statute of 1887):

Catlin v. Trustees, 113 N. Y. 133; 20 N. E. 864.

To Bowdoin College:

Batt v. Treasurer, 209 Mass. 459; 95 N. E. 854.

Rice v. Bradford, 180 Mass. 545; 63 N. E. 7.

Bequest to trustees for education of children in Turkey:

Pierce v. Stevens, 205 Mass. 219; 91 N. E. 319.

To city for ornamental fountain:

Matter of Hamilton, 148 N. Y. 310; 42 N. E. 717.

To Vivisection Investigation League (1916):

Matter of Howard, 94 Misc. 560; 157 Supp. 1114.

These citations, while not particularly instructive, are given for what they are worth. Each case must turn on the language of the statute and the provisions of the corporate charter or the purpose of the corporation proposed to be formed. As usual the principle is simple enough and the application to concrete facts alone is difficult.

C.—HEIRS AND LEGATEES.

1. Heirs of Real Estate.

a. LIEN OF THE TAX.

Most of the statutes make the tax a lien on the land even as against purchasers in good faith. They also provide that the tax shall be presumed to be paid after six years, but this is only as to a purchaser for value. As to the beneficiary the lien remains.

Matter of Strang, 117 App. Div. 796; 102 Supp. 1062.

Even where the tax remains a lien as against a *bona fide* purchaser there is no personal liability upon him.

Wilhelmi v. Wade, 65 Mo. 39.

The lien is no bar to an action to recover the land from a third person even though it is subject to sale in default of the payment of the tax.

Weller v. Wheelock, 155 Mich. 698; 118 N. W. 609.

Nor does it render the title defective so as to avoid the sale when the proceeds of the sale are in the hands of the executor; in that case the lien applies to the proceeds and not to the land.

Mandel v. Fidelity Trust Co., 128 Ky. 239; 107 S. W. 775.

So, where a will directs the sale of property within five years to pay certain legacies in cash, the lands themselves are not subject to a lien for payment of transfer taxes, but it attaches to the funds so realized.

Brown v. Laurence Park Realty Co., 133 App. Div. 753; 118 Supp. 132.

When the representatives of the estate have paid the transfer tax on real property to which the heirs succeed out of personalty, they are subrogated for the benefit of

creditors to the claim of the state to the amount of the tax so paid against those to whom the property descends.

Hughes v. Golden, 44 Misc. 128; 89 Supp. 769.

Where the decedent was a co-tenant of land on which other co-tenants had made improvements, and where each co-tenant presumed and knew what the others were doing, and the improvements were made under such conditions that on partition the co-tenants would be entitled to allowance for the improvements, only the balance of the interest of the decedent should be taxed, notwithstanding the fact that no proceeding for contribution had been commenced, and notwithstanding the fact that it might be claimed that no contribution would ever be asked. Still this does not justify the taxation of property that the decedent did not own, which does not pass to the heirs at law as her property.

Matter of Wood, 68 Misc. 267; 123 Supp. 574.

The lien of the tax is on all the property transferred and not on that transferred to any particular individual. It is therefore not severable and cannot be discharged from part of the land by paying part of the tax.

Smith v. Browning, 171 App. Div. 279; 157 Supp. 71.

b. PARTITION.

The fact that under partition proceedings the plaintiff's equitable interest in certain real estate was satisfied by an assignment to him of personal property, does not relieve him from the payment of a succession tax on his share of the estate, for the reason that he received the full value of the real estate in other property assigned to him belonging to the same estate.

Scholey v. Rew, 90 U. S. (23 Wall.) 331, 349.

Where a decedent owned an undivided third of an entire tract of land, partition of his interest could not have the

effect of apportioning the lien and fixing a part thereof exclusively on any one lot.

Appeal of Mellon, 114 Pa. St. 564, 574; 8 A. 183.

c. EQUITABLE CONVERSION.

Except in Pennsylvania the doctrine of equitable conversion is not applied in transfer tax law.

Connell v. Crosby, 210 Ill. 380; 71 N. E. 350.

McCurdy v. McCurdy, 197 Mass. 248; 83 N. E. 881.

Matter of Bartow, 30 Misc. 27; 62 Supp. 1000.

But where decedent's will directed that his real estate be converted into cash and so distributed, one of the beneficiaries died before the sale of the real estate, leaving a will disposing of her *interest* in her father's estate to her husband, *held*, that for purposes of the Transfer Tax Law it should be treated as personalty.

Matter of Mills, 86 App. Div. 555; 67 Supp. 956; 84 Supp. 1135; aff. 177 N. Y. 562; 69 N. E. 1127.

The proceeds of a partition sale held by an infant at the time of her death are personal property.

Matter of Stiger, 7 Misc. 268; 28 Supp. 163.

Where a testatrix devised one house of three to each of three nieces, and afterwards sold one and retained the money, the proceeds of such house does not go to said niece but becomes part of the residuary estate.

Matter of Delaney, 133 App. Div. 409; 117 Supp. 838.

d. SALE TO PAY THE TAX.

If the personal property is not sufficient then the real estate may be subjected to the payment of the claim of the state, and the trial court can make such order with the entire estate under its control as is necessary to satisfy any claim of the state against the estate for taxes, inheritance or otherwise.

Mandel v. Fidelity Trust Co., 128 Ky. 239; 107 S. W. 775.

Where real estate was left to a life tenant with remainder to the brothers and sisters who survived, with a contingent remainder over, the court held that the property was subject to a lien for the payment of the whole tax, and that if there was no money forthcoming to pay the whole tax, it was the duty of the executor to pay it. And the court directed the sale of so much of the property as might be necessary to raise the fund to pay the tax.

Matter of Wilcox, 118 Supp. 254.

e. WHERE CHARGED WITH A LEGACY.

The statutes usually provide that where a legacy is charged upon real estate the heir must deduct the tax before paying the legacy and makes him liable personally if he fails to do so.

So where a devise of real estate required the beneficiary to pay \$2,000 a year out of the future rents and profits to an annuitant the devisee of the real estate was required to pay the tax out of the rents and profits.

Re Lea, 194 Pa. St. 524; 45 A. 337.

f. AS TO ALIENS.

“Every alien holding real property in this State is subject to duties, assessments, taxes and burdens as if he were a citizen of the State.”

Section 16 (formerly Section 8) of the New York Real Property Law, being Chapter 52, Laws of 1909.

2. Legatees of Personal Property.

a. RENUNCIATION AND ASSIGNMENT.

As we have seen, a legatee may renounce and thus avoid the tax.

Matter of Wolfe, 89 App. Div. 349; 85 Supp. 949; aff. 179 N. Y. 599; 72 N. E. 1152.

While if he assigns the legacy the tax must be paid at the same rate as though it passed to the legatee.

Matter of Cook, 187 N. Y. 253; 79 N. E. 991.

And it is taxable though the legatee dies before receiving it.

Matter of Clinch, 180 N. Y. 300; 73 N. E. 35.

b. LEGACY IMPRESSED WITH A TRUST.

A legacy impressed with a trust is held taxable against the legatee for its full value in New York. The will gave an absolute bequest of one-third of the property to Mr. Parsons the executor. Though extrinsic evidence showed he took it in trust for the next of kin the bequest to him was held liable to the tax. The court said:

“ The question is, therefore, whether Mr. Parsons or the brother of the testatrix took the one-third interest which it is here sought to tax under the will. If Mr. Parsons, then, under the Collateral Inheritance Tax Law (chap. 713, Laws of 1887), such interest is subject to the tax. Disregarding the form of the final judgment in the Supreme Court as not binding upon the State, we find that, under the decision of the Court of Appeals, the one-third of the residuary estate passed under the will and vested in Mr. Parsons absolutely, and that no trust was imposed thereon by the will, and although it was held that, as the result of the extrinsic evidence introduced, he took it impressed with a trust in favor of the brother, this would not relieve him from the payment of the tax.”

Matter of Edson, 38 App. Div. 19; 56 Supp. 409; aff. 159 N. Y. 568; 54 N. E. 1092.

The contrary is held in Illinois.

People v. Schaefer, 266 Ill. 334; 107 N. E. 617.

And the rule has not always been strictly applied in New York. Where there was a bequest with precatory

words to use the legacy for charitable purposes with an agreement by the legatee with the testator so to use it and the agreement was fulfilled, held exempt.

Matter of Murphy, 4 Misc. 230; 25 Supp. 107.

c. LAPSED LEGACIES.

The rule is well established that a legacy or devise, even with or without words of limitation, lapses in case of the death of the legatee or devisee before the testator, in the absence of express words to prevent a lapse, or of something in the context of the will indicating a contrary intent, with the single statutory exception, in certain cases, of a legacy to a child or other descendant of the testator. This is, also, true where the gift is to several as tenants in common and not as a class.

Matter of Kimberly, 150 N. Y. 90; 44 N. E. 945.

Where a will created a contingent remainder, after a life estate, and the contingent remaindermen die during the continuance of the life estate, the gift to them lapses and their interest goes to the residuary estate.

Brooklyn Trust Co. v. Phillips, 134 App. Div. 697; 119 Supp. 401.

An interesting question as to the taxation of a specific bequest of Standard oil stock where the stock became entitled to stock in the subsidiary companies after the will was made, but before death, arose in

Matter of Leavitt, 86 Misc. 609; 148 Supp. 753; aff. sub. nom. *Brann*, 171 App. Div. 800; 157 Supp. 756.

Where there is a general residuary bequest, the legatee takes not only the property which the testator has not otherwise disposed of, but also every part of the estate which by lapse or otherwise is not effectually bequeathed to others. Where testator gives residuary estate to certain persons named they take, not as joint tenants, but as tenants in common, and where the testator made no change in his will after the death of a residuary, the residuary

share passes to his next of kin and not to the remaining residuaries.

Matter of Barrett, 132 App. Div. 134; 116 Supp. 756.

3. While Legacy is in Custodia Legis.

As we have seen, there are conflicting theories as to the estate of a legatee during the distribution and while the property of the decedent is “*in custodia legis*.”

In New York a distinction has been made between the unascertained right of a legatee before the settlement of an executor's accounts.

Matter of Zefita, 167 N. Y. 280; 60 N. E. 598.

Matter of Phipps, 77 Hun, 325; 28 Supp. 330; aff. 143 N. Y. 641; 37 N. E. 823.

And the situation after inventory and accounting.

Matter of Clinch, 180 N. Y. 300; 73 N. E. 35.

The theory being that the legatee has but a “naked right.”

Its logic was rather exploded by the Pennsylvania court in *Milliken's Estate*, 206 Pa. St. 149; 55 A. 853. In this case a brother died in New York and his sister died a resident of Pennsylvania ten days later. The court said:

“His securities were there (in New York) deposited in a trust company; they were not in his physical possession; could not well have been; his right to custody over them, to the extent of her share, nominally passed at once to her on his death, subject only to the incident of administration in New York. Her share from that moment was subject of bargain, sale or transfer by her in Pennsylvania, subject only to her share of the expenses of administration in New York. For two weeks then she was not only in full constructive possession, she was to a degree in actual possession; that is, she could exercise every right of an owner in actual possession except that

of determining the amount of charges for administration; she was the absolute, uncontrolled owner subject to a trifling lien.”

As the state’s right to the tax vests at the same moment that the right of the legatee vests in his legacy, some authorities have been inclined to hold that what the legatee gets is what remains after the tax has been subtracted, and his legacy is therefore, in reality, not taxed at all.

Finnen’s Estate, 196 Pa. St. 72; 46 A. 269.

The New York rule has been somewhat modified by the more recent decisions and it now seems to be the doctrine that the tax accrues *after death* as soon as the interest of the legatee is ascertained, and it is then due and payable and interest begins to run from that date.

Matter of Armstrong, N. Y. L. J., Feb. 20, 1912.

Matter of Gans, N. Y. L. J., April 13, 1912.

Matter of Sterry, N. Y. L. J., April 30, 1912.

4. From What Fund Payable.

Each legacy must bear its own share of the tax, unless the will otherwise directs; and even where it does so provide each of the distributive shares of the residuary estate must bear its proportionate burden.

Matter of Smith, 85 Misc. 636; 149 Supp. 24.

As to directions in the will providing for the payment of taxes on specific bequests out of the residuary estate the Court of Appeals said in *Matter of Gihon*, 169 N. Y. 443; 62 N. E. 561:

“Therefore, though the administrator or executor is required to pay the tax, he pays it out of the legacy for the legatee, not on account of the estate. * * * No one questions that where a legacy is given for a specified amount the tax must be deducted from the amount of the legacy and the balance only given to the legatee. A testator may direct that the tax on a particular legacy

shall be paid out of the estate, nevertheless, in reality the tax is still paid out of the legacy, the effect of the direction of the testator being merely to increase the legacy by the amount of the tax. * * * The full amount of the legacy is in law paid to the legatee and the deduction made from it and paid to the state or Federal government is paid on account of the legatee from the legacy which he receives."

Where the will directed that the tax on the specific legacies be paid out of the residuary and a codicil making other bequests made no such direction held that the provision in the will did not apply to the codicil.

Matter of Myers, N. Y. L. J., Nov. 22, 1913.

And where the will directed tax on legacies to be paid out of the residuary held not to include legacies given under a power of appointment vested in testator.

Loring v. Gardner, 221 Mass. 571; 109 N. E. 635.

The contrary was held in New York under a similar will.

Isham v. N. Y. Assn. for the Poor, 177 N. Y. 218; 69 N. E. 367.

In the absence of a provision in the will to the contrary the amount of the tax must be deducted from each legacy and the balance paid to the legatee.

Sherman v. Moore, 89 Conn. 190; 93 A. 241.

But it has been held that taxes imposed in a foreign jurisdiction must be charged against the property in the foreign state and cannot reduce the amount of a legacy payable from property within the state. "To hold that the effect of the foreign law is to reduce the legacy given by the will construed in accordance with the law of the testator's domicile is to permit the foreign law to regulate the testamentary capacity of a resident; as the foreign tax depends upon the jurisdiction over the property and

is not sustainable as a regulation of the exercise of testamentary power by the citizen of another state, it follows that the tax is merely a charge upon the particular property and not upon the pecuniary legacies given by the will."

Kingsbury v. Bazeley, 75 N. H. 13; 70 A. 916.

D.—LIFE ESTATES AND REMAINDERS.

1. Examples and Illustrations.

The law is complex because human wishes are both complex and vague and the mutations of human events impossible to anticipate. If testators could so carve up their estates that they could thereby escape inheritance taxes there would be still further encouragement to the creation of artificial estates. The effort of inheritance tax legislation is to impose a tax at each devolution of property, but by the creation of life estates and remainders at least one devolution is avoided.

Courts and estate lawyers have endeavored to classify the various life estates and remainders created by testamentary instruments; but the scientific phraseology is often as confusing as are algebraic formulas to those whose mathematics are rusty.

At the risk of being unduly elementary the following illustrations are given of the various life estates and remainders, the taxation of which has given rise to so much legislation and litigation:

Absolute Life Estate, Vested Remainder.

"To my wife for life on her death to my son Henry."

Joint Life Estate, Contingent Remainder.

"In trust, income in equal shares to my wife and my son Henry during their joint lives, remainder to the survivor."

Successive Life Estates, Vested Remainder.

“ In trust, income to my wife, for her life, on her death income to my son Henry during his life, on his death to the Blank Library.”

Life Estate Charged with an Annuity, Vested Remainder.

“ To my wife for life, she to pay \$1,000 a year toward the support of my sister Jane, on her death to my said sister Jane.”

Life Estate with no Remainder.

“ I direct my executors to apply all the residue to the purchase of an annuity from the blank insurance company for the use and benefit of my sister Jane.”

Limited Life Estate, Remainder vested subject to be divested, contingent Remainder.

“ In trust for my son Henry, income to be paid to him until he arrives at the age of 30 years when the principal fund is to be paid to him; or if he shall die before arriving at the age of 30 years then to my nephew Charles.”

Here the son is both life tenant and remainderman, but his vested remainder is liable to be divested by his death before he is 30 years, when the nephew's contingent remainder accrues.

Life Estate per autre vie, contingent remainder uncertain as to persons who will take.

“ In trust, income to my son-in-law James as long as his wife shall live; on the death of his wife the trustee shall pay the principal sum to the issue of my nephew Charles if any there be. If my nephew Charles shall have no issue then living the said principal sum shall be distributed among my surviving nephews and nieces per stirpes and not per capita.”

Life Estate with Power to Invade Principal; Remainder Uncertain as to Amount.

“ To my wife for life with the right to use any portion of the principal fund she may deem necessary for the support and education of our son Henry, on her death the remainder, if any there be, to my son Henry.”

Absolute Bequest with Defeasance and Remainder Uncertain Both as to Persons and Amount.

“ To the blank university provided it shall within five years after my death admit women students on equal terms with men. If it shall fail so to do then said sum shall be distributed equally among such educational institutions within this state as shall admit women students on equal terms with men.”

Life Estate with Absolute Power of Appointment.

“ To my wife for life on her death to such persons as she shall by will or deed appoint.”

Life Estate with Contingent Power of Appointment.

“ To my wife for life, remainder to my son Henry, but if he shall die before my wife, then to such persons as she shall by will appoint.”

Life Estate with Defeasible Power of Appointment.

“ To my wife for life or until her remarriage. In case of remarriage to my son Henry; if she remains my widow, remainder to such persons as she shall by will appoint.”

Life Estate with Power of Appointment limited to a Class.

“ To my wife for life on her death remainder to such of our heirs or next of kin as she may by will appoint.”

Defeasible Life Estate.

“ Annuity of \$300 to John Jones, my butler, as long as he shall remain in the employ of my daughter.”

Defeasible Remainder.

“To my wife for life, remainder to blank institute so long as it shall continue to give free instruction to the blind.”

2. Life Estates.

Whether the life estate be absolute or defeasible, as by remarriage, or per autre vie, whether subject to the limitations of dower and curtesy, or whether it is coupled with a power to invade the principle or power of appointment, or limited by time, as surviving to a certain age; it is, in the contemplation of inheritance tax law, a present right presently valuable and taxable.

Where the life tenant bought in the remainder she was held taxable as to that interest though the life estate was exempt under the statute.

Harrison v. Johnston, 109 Tenn. 245; 70 S. W. 414.

Where the life estate is taxable a merger is held to have taken place and a tax assessed on the fee against the life tenant.

Brune v. Smith, Fed. Cas. 2053.

As to the apportionment of dividends between the life tenant and the remainderman see:

Robertson v. de Brulatour, 188 N. Y. 301; 80 N. E. 938.

Matter of Harteau, 204 N. Y. 292.

Thayer v. Burr, 201 N. Y. 155; 94 N. E. 604.

Matter of Osborne, 153 App. Div. 312; 138 Supp. 18.

Matter of Cooper, 82 Misc. 324; 144 Supp. 189.

The accumulated income of a life tenant remains at her death taxable as part of the estate of her grantor.

Matter of Van Scoy, 81 App. Div. 655; 81 Supp. 1146.

a. FUND FROM WHICH THE TAX IS PAYABLE.

Where the succession tax against a life tenant is assessed against the property as a whole it is chargeable to principal.

Matter of McMahon, 28 Misc. 697; 60 Supp. 64.

Bishop v. Bishop, 81 Conn. 509; 71 A. 583.

As the remainder is also presently valued and paid out of the principal fund the income of the life tenant must be thereby reduced and it was claimed that he should be reimbursed. Under the Massachusetts Statute then in force the life tenant was exempt.

The court said:

“ The life legacy to Mr. Winthrop is not taxable under the statute, because he is the husband of the testatrix. The question is whether his loss of income is to be made up to him out of the principal of the fund, or out of the estate generally, or is to be borne by him as a consequence of the tax levied on the legatee of the remainder. There is nothing in the statute which authorizes any burdens to be imposed upon the legatee of the remainder in addition to the tax, and we find no warrant in the statute for taking any part of the principal of the trust fund, or of the estate generally, to make up the loss of the life tenant. There is no provision in the will for making good this loss out of the estate. We think that Mr. Winthrop must bear the loss. Perhaps a simpler way than that prescribed by the statute would have been to levy the tax at the end of the life estate upon the whole of the fund to be paid to the legatee in remainder, but the plan adopted is, we think, within the power of the Legislature, and Mr. Winthrop must be held to take his life interest subject to the law. While legacies to a husband are exempt from the tax, the consequences to a tenant for life of imposing a tax upon a legatee in remainder and deducting from the legacy must be held to have been intended,

and no way of reimbursement to the tenant for life has been provided.”

Minot v. Winthrop, 162 Mass. 113; 38 N. E. 512.

Since this case many statutes require the payment of the tax out of the corpus, both as to the life tenant and the remainderman. The life tenant loses the income on the amount of the tax paid on the remainder interest and this is held to counterbalance the loss to the remainderman by reason of paying the tax on the life estate and not out of income. Under these circumstances the life tenant does not refund the tax but takes the income on the net estate less the tax on both remainder and life interest.

Matter of Hoyt, 57 Misc. 531; 109 Supp. 1084.

Matter of Bass, 57 Misc. 531; 109 Supp. 1084.

Though one Surrogate held the tax payable from income.

Matter of Day, 86 Misc. 131; 149 Supp. 221.

Where the will declared that the life estate should be “free from inheritance taxes,” it was held that the testator intended to preserve to the life tenant the income on the entire fund, and that the tax must be paid out of the residuary.

Matter of Bingham, 86 Misc. 566; 148 Supp. 918.

b. CHARGED WITH AN ANNUITY.

In case of an annuity the amount received by the life tenant is arbitrarily fixed and does not depend upon the amount of the principal fund.

In such case the payments must be reimbursed on the rule in:

Matter of Tracy, 179 N. Y. 501, 510; 72 N. E. 519.

“The method of restoring to the residuary estate the tax so paid by the trustee is as follows: Take for illustration an annuitant whose probable duration of life is ten years. The trustees would deduct from each annual payment as made one tenth of the tax and restore it to the residuary estate. In the case at bar the death of the

annuitant was suggested on the argument as having taken place since that of the testator. Any portion of the transfer tax not restored to the estate by the process indicated at the time of the annuitant's death would be a loss which the residuary estate must sustain."

When a life estate is charged with an annuity the present theoretical value of the annuity should be computed and deducted and not the amount necessary to set aside to produce the annuity.

Matter of Maresi, 74 App. Div. 76; 77 Supp. 76.

But when the will directs an annuity to be purchased from specified insurance companies there is no remainder and the value of the annuity is, in that case, a specific bequest to be measured by its actual cost to the estate. So held when the actual annuity cost was \$19,000 more than the appraised theoretical value. The cost was deducted from the value of the residuary estate.

Matter of Hutchinson, 105 App. Div. 487; 94 Supp. 354.

c. POWER TO INVADE PRINCIPAL.

When the will gives the life tenant power to invade the principal or a trustee power so to do on behalf of the life tenant the courts have been somewhat confused as to what method of taxation should be adopted.

(1) *Suspending taxation of Remainder.*

Originally in New York it was the practice to value the life estate and tax it and suspend taxation as to the remainder because its amount was uncertain.

Matter of Babcock, 37 Misc. 445; 75 Supp. 926; aff. 81 App. Div. 645; 81 Supp. 1117.

Matter of Granfield, 79 Misc. 374; 140 Supp. 922.

Matter of Blynn, N. Y. L. J., Jan. 29, 1915; 160 Supp. 730.

Matter of Neher, 95 Misc. 68; 158 Supp. 454.

In the Blynn case the New York Surrogate said:

"This is an appeal by the State Comptroller from the appraiser's report and the order entered thereon, upon the

ground that the taxation of certain remainder interests passing under the will of decedent was improperly suspended. The executors contend that there was not improper suspension of taxation, inasmuch as the life tenant is given a power to use the principal of the fund. The power is found in the will of decedent. If it should be exercised by the executors to its fullest extent, i. e., to the exhaustion of the principal, there would be nothing that could be transferred to the remaindermen at the death of the life tenant. In the *Matter of Granfield*, (79 Misc. 374; 140 Supp. 922), a case very similar to the one under discussion, the court said, at page 381; 'To tax the estate at the present time, in the event nothing should ultimately pass to the remaindermen, would be imposing a tax upon the property and not upon the transfer, in direct conflict with the whole theory of the transfer tax.' Applying this rule to the situation herein, I find that the contention of the executors should be sustained. The appeal is therefore dismissed and the order fixing tax affirmed."

This is the rule that has been generally adopted in other states:

People v. Freese, 267 Ill. 164; 107 N. E. 857.

Nieman's Appeal, 131 Pa. St. 346; 18 A. 900.

(2) *When the Discretion is in the Trustee.*

Under this method it is obvious that if the life tenant uses part or all of the principal part of the estate will escape taxation, but where the discretion is vested in the trustee to use part or all of the principal no remedy has as yet been discovered. Since the decision in *Matter of Zborowski*, 213 N. Y. 109; all the prior cases in New York were overruled and the remainder taxed immediately at the highest possible rate.

Matter of Blun, 176 App. Div. 189; 160 Supp. 731.

(3) *Where the Discretion is in the Life Tenant.*

When the life tenant has power to use the principal at his own discretion the New York courts are coming to the view that a base fee has been created and that the life tenant should be taxed for the entire estate under the following provision, to be found in most of the statutes:

“In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made in respect of any contingent incumbrance thereon, nor in respect of any contingency upon the happening of which the estate or property or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax in respect of the amount or value of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed in respect of the actual duration or extent of the estate or interest enjoyed.”

N. Y. Statute, Sec. 230.

This was the construction adopted by the New York County Surrogate in the *Matter of Post* N. Y. Law Journal, Aug. 1, 1916. In this case Edward C. Post devised to his wife Emily T. Post, “to have, hold, use, occupy and enjoy the same for and during her natural life with full power to invade the principal.” The Surrogate said, citing *Matter of Terry*, 218 N. Y. 218, “This would seem to indicate that the entire estate should be taxed against the person who has the power to use and dispose of the principal, and that taxation upon the interest of the re-

maindermen should be suspended until they vest in possession. I have repeatedly held that such a power is a base fee. Therefore the entire estate belongs to the widow for all purposes except that of testamentary disposition. (*Farmers Loan and Trust Co. v. Kip*, 192 N. Y. 266; 85 N. E. 59.)”

See also:

Matter of Rogers, 149 Supp. 462.

A trust accompanied by a discretionary power to the life beneficiary of the income, to use such part of the principal as she may demand or need for her own use or that of her children, gives her the absolute ownership of the principal, if she so elects and makes the trust voidable.

Solley v. Westcott, 43 Misc. 188; 88 Supp. 297.

There is sometimes a close question whether there is any estate at all in the remainderman, as where there is an absolute bequest with a remainder over of such portion as is not used. In such case the remainder over is void.

Campbell v. Beaumont, 91 N. Y. 464.

On the other hand there may be an equally close question whether the will in fact gives the power to invade the principal. Where a devise by a testator of all “the rest, residue, and remainder” of his estate, to his wife during her life “and after death I give and bequeath the remainder thereof as follows—” affords no basis for the contention that the words “the remainder thereof” by implication give the wife a right to use the principal, and the interests of remaindermen are presently determinable and subject to transfer tax.

Matter of Runice, 36 Misc. 607; 73 Supp. 1120.

A gift of the income without remainder over creates a fee.

Hatch v. Bassett, 52 N. Y. 359.

Or where the nature of the property is such that to use it means to consume it.

Bell v. Warn, 4 Hun 406.

Baumgrass v. Baumgrass, 5 Misc. 8; 24 Supp. 767.

The rule adopted by the New York Surrogate in the *Post* case is that adopted by the Tax Commission of Wisconsin, citing as authority:

Larsen v. Johnson, 78 Wis. 300; 47 N. W. 615.

The case relied on was not a transfer tax matter but substantially held that, where there was a power to invade, the principal vested in the life tenant and a base fee was created.

There is an excellent discussion of the entire question in Heaton on Surrogate's Courts, Third Edition, § 280 as follows:

"A beneficiary given the income of a fund with the right to encroach upon the principal may in certain cases be the sole judge of the occasion and his necessities.

Where property is willed without specifying the nature of the estate and the donee is given a power of disposition, the latter takes the absolute title to the property, but where the donee takes an estate expressly for life, with a power of disposal during life, he takes a life estate only, and whatever is left of the estate at the death of the life tenant passes to the remainderman."

Tompkins v. Fanton, 3 Dem. 4-7.

Will gave the widow the right to possess and enjoy the fund during life, and if necessary to use the principal for her support. No trustee was provided for — *Held*, that the widow was entitled to the possession of the estate and had the right to determine how much of the principal she should use.

Matter of Grant, 16 Supp. 716; re-examined, 86 Hun 617.

Matter of McDougall, 141 N. Y. 21, distinguished.

Upon payment of the fund to a widow who has the right to use part or all of the fund for support she becomes trustee for the remaindermen, and that trust devolves upon her death upon her representatives and not upon those of the first testator.

Leggett v. Stevens, 77 App. Div. 612; 79 Supp. 289.

Devise of a farm limited to such part as may remain after the death of the widow. No trust power given to executor — *Held*: that the widow was the one to determine her necessity.

Douglass v. Hazen, 8 App. Div. 27; 40 Supp. 1012.

Will gave husband use of the estate and “any part of the principal that may be needed for his support,” *held*: that the husband was the sole judge of the amount of the principal needed for his support.

Matter of Parsons, 39 Misc. 126; 78 Supp. 975.

Testator gave his personal estate to widow for life for support of herself and children — *held*: that she should have the possession of the personal estate and should use so much as she deemed necessary for their support.

Billor v. Loundes, 2 Dem. 590.

“According to the cases, very similar to this, which the courts have passed upon, the person having the life estate with power of using the principal has received and retained the possession of the corpus of the estate without giving security.”

Thomas v. Wolford, 49 Hun 145; 1 Supp. 610.

Judge Peckham said in *Matter of McDougall*, 141 N. Y. 21: “In other cases where it has been held that the legatee was entitled unconditionally to the possession of the legacy without security, other facts existed, such as where the language of the will made it manifest that the testator

intended to give the legatee power to use in his discretion some portion of the corpus of the estate for his support."

See also:

Matter of Grant, 86 Hun 617; 16 Supp. 716.

Matter of Trelease, 49 Misc. 207; 96 Supp. 318; aff. 115 App. Div. 654.

Terry v. Rector St. S. Ch., 79 App. Div. 527; 81 Supp. 119.

Swarthout v. Ranier, 143 N. Y. 499.

d. WITH POWER OF APPOINTMENT.

This topic has already been considered at length *ante* under "Powers of Appointment." It is only necessary to add here that the power does not raise the life estate to a fee and is ignored as an asset in the hands of life tenants. It does not seem to have occurred to any appraiser that a power of appointment may be a very valuable right. On the promise to appoint creditors and thus pay their claims credit may be secured to the present worth of the remainder and was secured to the amount of many thousands of dollars in a recent case.

Matter of Slosson, 87 Misc. 517; 149 Supp. 797; aff. 168 App. Div. 891; 152 Supp. 690; reversed, 216 N. Y. 79.

This affords one of the most curious anomalies in transfer tax law. A life tenant with power of appointment may at once sell the remainder under a valid contract to appoint, and thus increase the cash value of the bequest by the amount received on such sale in addition to the life estate and this amount will be free and clear from the tax, as against the life use.

The will that creates a life estate with a power of appointment and contingent remainders over raises a problem that the law of inheritance taxation has not yet solved satisfactorily.

See *ante* "Power of Appointment," Part II, p. 109, and *post*, under "Remainders," p. 207.

e. TAX ASSESSED ON THEORETICAL NOT ACTUAL VALUE.

Under the statute the value of the life estate must be computed upon the basis of 5 per cent interest irrespective of the actual income of the fund, whether higher or lower.

Matter of Potter, 139 App. Div. 905; 124 Supp. 1126; aff. 199 N. Y. 561; 93 N. E. 378.

The theoretical value of a life estate computed upon the mortality tables and rate of interest fixed by the statute is the value at death of the testator, and not the actual duration of life and it is the legal measure of the value of a life estate although the life tenant only survived the testator a few months.

Howe v. Howe, 179 Mass. 546; 61 N. E. 225.

Though it might seem an injustice to tax the theoretical value of a life estate of a woman of 30 whose expectation of life is 35 years and whose interest in the fund is about three fourths its entire amount at full value when she actually survives the testator only a few hours, the logic that a time must be fixed for valuation and that time is the death of the testator is immutable and has thus far been uniformly sustained.

The Supreme Court of Wisconsin reasons thus:

“The right to receive being the subject of inheritance taxation, the amount is regulated, primarily, by the value of the right. The right in the particular case has reference to the privilege to receive, for life, the yearly payments. There may be many payments, but the right is an entirety. That vested, subject to the burden on the transfer, as soon as the will was allowed. Clearly it could be valued, the transfer tax be assessed thereon, and be wholly liquidated, if such be the legislative plan.”

State v. Widule, 161 Wis. 389; 154 N. W. 695.

In New York the Appellate Division took another view and held that where the life tenant died shortly after the testator the actual duration of life should be the measure of value; but this decision was reversed by the Court of Appeals in:

Matter of White, 208 N. Y. 64; 101 N. E. 793.

The court says, at page 68:

“The rule promulgated by the legislature effects certainty and uniformity which the principle adopted by the Appellate Division would tend to destroy * * * while in this case the rule works to the advantage of the state, inasmuch as the remainder passes to a religious corporation which is exempt from the tax, such manifestly is not its necessary or uniform result and it is not subject to criticism as harsh or unjust.”

Where there was a power to invade the principle the Surrogate deducted the actual and not the theoretical value of the life interest. The question has not since been raised but the authority is weakened if not overruled by the subsequent cases.

Matter of Hall, 36 Misc. 618; 73 Supp. 1124.

3. Remainders.

The immediate taxation and valuation of a life estate is simple and apparently equitable, as far as any tax on the principal of a fund can be so regarded. The immediate taxation of remainder interests is neither as simple nor as equitable. As it reduces the fund the life tenant must suffer while to make the remainderman pay for a benefit he may never live to enjoy also seems unjust. Many states give the remainderman an election to pay at once or file a bond to pay when the remainder accrues. This is more simple and does not deplete the fund but it is a hardship on the remainderman and works to the disadvantage of the state. The collection of the tax is postponed for a generation. The

expense of watching bondsmen and beneficiaries is great, the amount of labor burdensome and the financial results not commensurate. This has led many important states to require the immediate taxation of all remainders at the highest possible rate, to be paid out of the principal fund.

a. THE LAW IN FORCE AT DEATH OF TESTATOR GOVERNS.

It is the statute in force at the death of the testator and not that in force at the date of the death of the life tenant which governs the taxation of remainders. If taxation has been suspended for any reason this rule often brings the case under obsolete provisions and antiquated authorities.

State ex rel. Basting v. Probate Court, 132 Minn. 104; 155 N. W. 1077.
Matter of Mason, 120 App. Div. 738; 105 Supp. 667; aff. 189 N. Y. 556; 82 N. E. 1129.

Matter of Roosevelt, 143 N. Y. 120; 38 N. E. 281.

Matter of Meserole, 98 Misc. 105; 162 Supp. 414.

b. VESTED REMAINDERS NOT TAXABLE WHEN TESTATOR DIED BEFORE THE STATUTE.

Remainders that vested prior to the statute are not taxable at the death of the life tenant and a statute declaring them so is unconstitutional.

Matter of Pell, 171 N. Y. 48; 63 N. E. 789.

Matter of O'Berry, 179 N. Y. 285; 72 N. E. 109.

An this is so even though the remainder be defeasible.

Matter of Smith, 150 App. Div. 805; 135 Supp. 240.

Matter of Hitchins, 43 Misc. 485; 89 Supp. 472; aff. 181 N. Y. 553; 74 N. E. 1118.

The court said in the *Hitchins* case at page 493:

“Where a vested though defeasible interest in remainder passes under a will to a remainderman on the testator's death, though the possession does not pass until the death of the life tenant, the transfer or succession is referred to the time of the death of the testator, and if that occurred

prior to the enactment of the act taxing transfers of property, the remainder is not taxable.”

Matter of Seaman, 147 N. Y. 69; 41 N. E. 401.

Matter of Stewart, 131 N. Y. 274; 30 N. E. 184.

Matter of Curtis, 142 N. Y. 219; 36 N. E. 887.

Matter of Langdon, 153 N. Y. 6; 46 N. E. 1034.

c. TAXATION POSTPONED UNTIL REMAINDERMAN GETS POSSESSION.

It was formerly the rule in New York and still is in many states to postpone the taxation of the remainder until the expiration of the intermediate estate.

McLemore v. Raines' Estate, 131 Tenn. 637; 176 S. W. 109.

State ex rel. Hale v. Probate Court, 100 Minn. 192; 110 N. W. 865.

Matter of Cager, 111 N. Y. 343; 18 N. E. 866.

Matter of Hoffman, 143 N. Y. 327; 38 N. E. 311.

d. PRESENTLY TAXABLE.

By Chapter 76, L. 1899, the rule was changed in New York providing for the present taxation at the highest possible rate of all contingent remainders with a refund in case a lower rate ultimately proves to be due. This statute has been copied in many states and is held constitutional.

Matter of Vanderbilt, 172 N. Y. 69; 64 N. E. 782.

Matter of Brez, 172 N. Y. 609; 64 N. E. 958.

Matter of Kennedy, 93 App. Div. 27; 86 Supp. 1024.

The taxation is against the trustees who take the legal title. Order of Surrogate affirmed without opinion.

Matter of Guggenheim, 189 N. Y. 561; 82 N. E. 1127.

But where the person to whom the contingent remainder might pass was uncertain the courts still suspended taxation until the uncertainty was removed.

Matter of Zborowski, 84 Misc. 342; 145 Supp. 1101; revd. 213 N. Y. 109.

Matter of Granfield, 79 Misc. 374; 140 Supp. 922.

State ex rel. Basting v. Probate Court, 101 Minn. 485; 112 N. W. 878.

Same Case, 132 Minn. 104; 155 N. W. 1077.

e. WHEN BENEFICIARY IS UNCERTAIN.

It was held by the N. Y. Court of Appeals in *Matter of Zborowski, supra*, that even when the ultimate beneficiary was uncertain the remainder was taxable at the highest possible rate. The decedent gave her residuary estate in trust to pay the income to her son Louis until he attained the age of 21 years, but if he did not live to be 21 then to his issue, if any, and in default of issue, to persons taxable at 5 per cent rate. Under the ruling of the *Zborowski* decision the tax was imposed at the 5 per cent rate against the trustee for the 5 per cent class.

In discussing the legislative policy in adopting this provision the court said:

“ The different statutes hereinbefore referred to contain evidence of a constant effort of the legislature to enlarge the class of transfers immediately taxable upon the death of the transferror. The question of the legislature’s power in that regard was set at rest by the decision of this court in *Matter of Vanderbilt*. In one aspect it may be unjust to the life tenant to tax at once the transfer, both of the life estate and of the remainder though contingent, and it may seem unwise for the state to collect taxes which it may have to refund with interest, but those considerations are solely for the legislature, who are to judge whether they are more than offset by the greater certainty which the state thus has of receiving the tax ultimately its due under the statute. However unwise or unjust it may seem in a particular case like this for the state to collect the tax at the highest rate when in all probability the remainder will vest in a class taxable at the lowest rate, it is the duty of this court to give effect to the statute as it is written.”

To the same effect is:

Matter of Shearson, 174 App. Div. 866; affd. 220 N. Y. mem.

A similar statute has been construed in like manner by the court of Illinois.

Ayres v. Chicago Title & Trust Co., 187 Ill. 42; 58 N. E. 318.

When the remainder interest belongs to a decedent while the life tenant still survives it is none the less presently taxable as in *Matter of Huber*, 86 App. Div. 458, 461; 83 Supp. 769, where the will read: "The interest which I may have in the estate of my deceased father which interest is now subject to the life estate of my mother."

Under the circumstances the value of the life estate of the mother at the death of the remainderman is valued and deducted from the fund, the balance being presently taxable.

So where a remainderman had an estate in a trust fund subject to the life use of a brother the lower courts were reversed and the matter remitted to the Surrogate on this theory. The remainder interest belonged to a non-resident. The surrogate erroneously suspended taxation until the death of the life tenant. Meantime the statute taxing transfers of non-resident property was repealed; but the court held that the remainder interest, being presently taxable, the repealing act did not avoid the tax.

Matter of Wright, 214 N. Y. 714; 108 N. E. 1112.

There was apparently an exception where the life estate was defeasible by re-marriage because it is impossible to value the life estate by the use of the mortality tables. While the probability of death may be estimated from these tables, there are no statistics available from which the probability of remarriage may even be conjectured.

Herold v. Shanley, 146 Fed. 20; 76 C. C. A. 478.

New York, and most of the other state statutes, meet this difficulty by providing that the life estate shall be assessed without regard to the possibility of its being divested. This is regarded as fair to the life tenant

because it is her own act that defeats the estate and the remaindermen cannot complain because they get the property all the sooner.

Matter of Plum, 37 Misc. 466; 75 Supp. 940.

Matter of Baugham, (N. C.) 90 S. E. 203.

Stengel v. Edwards, (N. J.) 98 A. 424.

Cases have even been known where the remaindermen have devoted much enterprise and exercised subtle diplomacy to produce the bridegroom and smooth the path of true love. Thus doeth the winged God sweep the cobwebs spun by the legal mind.

f. HIGHEST POSSIBLE RATE.

Even though the possibility is remote that the bequest will go to anyone taxable at the higher rate the courts have upheld the provision of the statute requiring taxation at the highest possible rate. Thus, where there was a trust for 20 years to pay the income to a brother and two sisters, and if all should die during that period then to a nephew, the tax was imposed at the highest rate on the possibility that all three life tenants might die immediately in some catastrophe.

People v. Starring, 274 Ill. 289; 113 N. E. 627.

When by the terms of a will it is possible that if all the children of testator named as remaindermen should die without issue at the same time in a single catastrophe the property would go to a contingent remainderman taxable at the 5 per cent rate; held, that the transfer should be assessed at the higher percentage although the possibility of the contingent remainderman taking is extremely remote.

Matter of Hutton, 176 App. Div. 217; 160 Supp. 223; aff. 220 N. Y. 210.

Where the will created a trust for a grandson until he was 25, if he died before 25, to his issue, with no provision

in case of failure of issue, held that the fee vested in the grandson subject to be divested, therefore no remainder existed to be taxed as a construction creating an intestacy was to be avoided.

Matter of Zitzlsperger, 170 App. Div. 615; 156 Supp. 571.

In spite of the apparent difficulty, however, the method has worked out in practice and has been adopted in other states. In New Jersey the problem of the transfer of stock in New Jersey corporations subject to the exercise of a power of appointment came before the Court of Errors and Appeals in *Security Trust Co. v. Edwards*, decided June 18, 1917, and not yet reported. The court said:

“ It seems quite plain that in obeying this mandate, the tax on the interests in remainder will normally await the termination of the particular estate; the counsel urge as a ground of invalidity of such tax, that it becomes impossible for the executor or trustee to transfer shares in New Jersey corporations until that time, without submitting to the requirement of section 12 for payment of full five per cent. tax, which was upheld in *Senff v. Edwards*, 85 N. J. L. 67, or depositing a five per cent. tax with the Comptroller and taking out a waiver, as provided in chapter 58 of the Laws of 1914. These provisions appear to be aimed particularly at the transfer of the legal estate in stock to a purchaser, or the like, rather than at the particular succession of a legatee in remainder. There is also the provision contained in the last paragraph of Section 3, permitting the compounding on equitable terms of a tax not presently payable, which is evidently the “ compromise ” mentioned in *Senff v. Edwards*, *supra*. The statutory scheme is not obscure. If the executor wishes to sell the stock, without waiting for the specific assessment based on interests created by the will, it can be done by paying the five per cent. tax under Section 12, or depositing it

under the Act of 1914, p. 97, subject to refund of excess when later ascertained; or by paying the tax on the particular interests as presently due, and compromising that against the remainders upon an equitable ascertainment of its present worth, according to Section 3. We are unable to see that this scheme gives rise to any unjust or unconstitutional discriminations. It may be said that the point is not before us except as contained in the reasons for setting aside a five per cent. tax on remainders presently payable."

g. MAXIMUM AND MINIMUM RATE.

In order to lessen the hardship of the rule as against life tenants the New York statute and those of some other states provides that the order assessing the tax should state the amount due at the highest possible rate and also the amount which would be due if the intermediate estate terminated immediately at the date of the appraisal.

As, for example, in the *Zborowski* case *supra*, if the son Louis Zborowski had reached the age of 21 at the date of the appraisal the amount of the tax would be at the 1 per cent rate instead of the 5 per cent rate assessed on the possibility that the property would go to distant relatives.

The difference between the tax assessed at the 5 per cent rate and that which would be due at the 1 per cent rate is required to be deposited in money or securities and the state pays interest on the fund to the trustees while the minimum tax goes to the treasury as part of the tax collections for the current year.

Under the complex provisions of some wills the drawing of the taxing order thus provided for has proved difficult and so vexing that one surrogate refused to make such a computation until directed to do so by the Appellate Division.

Matter of Spingarn, 175 App. Div. 806; 162 Supp. 695.

In ordinary cases the rule works substantial justice. It only applies where there is a trust fund subject to a life estate and the fact that a portion of that fund is held by the state treasury, and pays interest during the life estate places no unjust burden on the life tenant while keeping the property intact for the remainderman. The only trouble is in the rigid application of maximum and minimum rates to small estates where the amount of book-keeping involved costs more than the tax. For forms and further discussion see Pt. V, p. 413 et. seq.

h. WHERE AMOUNT OF REMAINDER IS UNCERTAIN.

Where a legacy was devised to an exempt charitable corporation as long as it should continue present activities but when it ceased so to do then to heirs at law of testatrix it was held that the legacy was to be valued and exempted and taxation suspended on the contingent remainder, distinguishing *Matter of Zborowski*, on the ground that it was not only uncertain who the remaindermen would be; but, also, whether there would be any remainder to be taxed.

Matter of Terry, 218 N. Y. 218; 112 N. E. 931.

As we have just seen this principle has recently been applied where the life tenant has a discretion to use the principal fund and there may be no remainder.

Matter of Post, *supra*, p. 193.

i. UNDER POWERS OF APPOINTMENT.

There has been some confusion as to the present taxation of remainders where the life tenant has a power of appointment. When the question was first raised in New York the provision of the statute taxing the transfer in the estate of the donee of the power whether it was exercised or not was not attacked as unconstitutional and it was held that where an absolute power of appointment

is bestowed upon the beneficiary of a trust, taxation should be suspended until the remainders fall in, as the tax is on the exercise of the power by the donee as a part of the donee's estate.

Matter of Howe, 86 App. Div. 286; 83 Supp. 825; 13 Ann. Cas. 347; aff. 176 N. Y. 570; 68 N. E. 1118.

Matter of Field, 36 Misc. 279; 73 Supp. 572.

In a subsequent case it was pointed out that where the power was defeasible it might not be exercised at all and therefore taxation must be imposed in the estate of the donor at the highest possible rate because the beneficiaries might take under the will of the donor as there might be no power to exercise.

Matter of Burgess, 204 N. Y. 265; 97 N. E. 591.

Matter of Gulick, N. Y. L. J., March 20, 1914.

If a limited or contingent power of appointment is subsequently exercised, although the remainder has already been taxed in the estate of the donor, under *Matter of Burgess*, 204 N. Y. 265, the tax on the transfer by the donee of the power must none the less be imposed in the estate of the donee. The remedy, if any, is modification of the taxing order in the estate of the donor of the power.

Matter of Buckingham, 106 App. Div. 13; 94 Supp. 130.

Matter of McLean, N. Y. L. J., July 18, 1914.

Where a husband died exercising a power in his wife's favor and she died ten days after he did the property vested in her and was taxable as part of her estate though she never came into possession.

Matter of Lord, 111 App. Div. 152; 97 Supp. 553; aff. 186 N. Y. 549; 79 N. E. 1110.

In the *Matter of Clarke*, 39 Misc. 73, 78 Supp. 869, it was held that a remainder was not presently taxable where it is limited to children of a life tenant, or her appointees by will, and she is not shown to have any children, as, in

such case, no transfer, defeasible or otherwise, of the remainder had yet been made.

The complexity of the situation was further increased in New York by the repeal of the provision in 1911 which taxed the transfer in the estate of the donee on failure to exercise the power. This provision had been declared unconstitutional as to powers created by decedents prior to the statute; but the repeal makes it possible that any transfer under a power of appointment may pass under the will of the donor, if the donee fails to exercise the power; and the result is that such transfers must be taxed in both estates. For a long while it was supposed that this was so only as to limited powers, under the Burgess decision, but the Appellate Division recently pointed out the situation when the taxation of an absolute power had been suspended in the estate of the donor. The question before the court was one of trustee's commissions; but the court said: "We are not passing upon the propriety of the suspension of the tax nor stating a rule to be applied when the tax is not suspended."

Matter of Vanneck, 175 App. Div. 363, 366; 161 Supp. 893.

The statute imposing a tax upon the exercise of the power applies where the power is exercised by deed in the same way as when the appointment is by will.

Matter of Wendel, 95 Misc. 406; 160 Supp. 822.

Where the exercise of the power by the donee does not effectually dispose of all of the property the portion not disposed of must be taxed in the estate of the donor.

Matter of Tompkins, N. Y. L. J., Aug. 11, 1913.

Where taxed in the estate of the donee the property must be valued as of the date of the exercise of the power.

Matter of Tucker, 27 Misc. 616; 59 Supp. 699.

The difficulties in which the question is involved are illustrated in the estates of William H. and Louise

Tillinghast. Under the will of the former a power of appointment was given to Louise Tillinghast to be exercised "while she remains his widow." In default of the exercise of the power the property passed to residuary legatees. It was taxed in the estate of William H. Tillinghast on the theory that the power was "limited" as Mrs. Tillinghast might remarry and not exercise it. The tax was paid at the 5 per cent. rate. Mrs. Tillinghast did not remarry but died leaving a will exercising the power in favor of children by her first husband who were in the 1 per cent class as to her and in the 5 per cent as to W. H. Tillinghast, her second husband.

The exercise of the power was taxed in her estate at 1 per cent; but the court held that the tax paid out of the William H. Tillinghast estate could not be applied nor could the transfer under the power escape taxation because there had been a tax paid in the estate of the donor.

Matter of Tillinghast, Louise, 94 Misc. 50; 157 Supp. 382.

A motion was then made to modify the order made more than six years before taxing the fund in the William H. Tillinghast estate. The comptroller opposed the motion on the ground that the statute of limitations had run and also on the ground that the remedy was by appeal from the original order. The surrogate decided against him and modified the original taxing order.

Matter of Tillinghast, W. H., 94 Misc. 76; 157 Supp. 379.

The comptroller appealed from this order and the estate from the order in the Louise Tillinghast matter and both cases are to be argued before the Appellate Division, First Department, at the next term. (Oct. 1917)

As the matter stands, remainders after a power of appointment should be taxed at the highest possible rate in the estate of the donor, the tax to be refunded in case

the donee exercises the power and thus defeats the remaindermen of the donor's estate. This demonstrates the advantage of that provision in the statute sustained in Massachusetts and the states which follow its lead taxing transfer in the estate of the donee of the power, whether the power is exercised or not.

j. TAXATION OF FULL UNDIMINISHED VALUE.

The New York Statute and those of many other states provide as follows in regard to the taxation of contingent remainders where taxation has been suspended or postponed until the remainderman come into possession;

“ Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.”

This provision was held retroactive in:

Matter of Hoosack, 39 Misc. 130; 78 Supp. 983.

and not retroactive in

Matter of Buckham, N. Y. L. J., Jan. 10, 1912.

To Illustrate: A life estate in \$100,000 to a widow of 30 is valued on the 5% basis at \$75,421.25 and taxation on the value of the remainder presently worth \$24,578.75 is suspended. When the remainder falls in, that is, when the life tenant dies, the tax must be paid on the full \$100,000. This has caused much litigation on the ground of double taxation.

But if the remainder is taxed at 1%, the tax presently

payable is \$245.78, which is the present worth of \$1,000 at the end of the life tenant's expectation of life. Therefore, if the tax is suspended or postponed to the death of the life tenant, it should pay the tax on the full amount which would be, at 1% \$1,000.

This proposition has been sustained by the authorities.

Matter of Eno, N. Y. L. J., April 24, 1913.

Matter of Seligman, 170 App. Div. 837; 156 Supp. 648; aff. 219 N. Y. 114.

Matter of Bucki, 172 App. Div. 455; 158 Supp. 657.

Matter of Dickey, 174 App. Div. 467; 160 Supp. 646.

In affirming the *Seligman* case Judge Pound, writing for the Court of Appeals said:

“ When taxation has been held in abeyance the contingent or defeasible estate in expectancy is to be appraised at its full value when the persons entitled thereto shall come into the beneficial possession or enjoyment thereof. Thus in the *Terry* case (216 N. Y. 218), if the legacy to the McGregor home should revert to the heirs, it would then be appraised and taxed at its full value without any deduction. In such a case, because we cannot presently carve out of one total the value of the present and future estates, the legislature has established the rule of giving both estates the highest possible value as the persons entitled thereto respectively take possession. In the case at bar the entire future interest of the sons might, in the first place, have been appraised for taxation and the tax then paid on such valuation; but, as payment was postponed, the tax should now be upon the full value.”

The importance of this provision in the statute is illustrated in *State ex rel. Basting*, 101 Minn. 485; 112 N. W. 878, where there was a trust for three daughters for ten years. The tax was suspended because it was uncertain whether the daughters would survive. This was in 1905. In 1916 the ten years had expired and the matter again came before the court in *State ex rel. Basting*, 132 Minn.

104; 155 N. W. 1077. There was no provision in the law in 1905 for taxing at full undiminished value. The court valued the estate as it existed in 1916 and then taxed the present worth of that sum at the death of the testator in 1905. Obviously the state lost the interest on the tax for ten years by this method.

“ Full undiminished value ” means the value as of the death of the testator undiminished by any deduction for the life estate; it does not mean increase in the value of the estate since the death of the testator.

Matter of Lawson, N. Y. L. J., Jan. 3, 1914.

E.— COMPUTATIONS.

1. The Basis of Calculation.

a. MORTALITY TABLES AND INTEREST RATE.

Computations of the value of life estates and annuities, remainders, dower, curtesy and the like are by the statutes required to be made by the judge of probate or the insurance department and are invariably referred to experts whose computations are conclusive as to method.

Matter of Davis, 91 Hun 52; 36 Supp. 822.

But the attorney is usually expected to advise his client what the tax on such estates is likely to be and no lawyer likes to feel helpless in the hands of the mathematician, though he usually is so.

By the use of prepared tables the more simple calculations may be made by any attorney, given the rate of interest, and the table of mortality prescribed in the particular state.

These mortality tables, known as the Actuaries' Combined Experience table, the American Experience table and the Carlisle table of mortality are based on the experience of insurance companies in the observation of a large number of lives and were originally prepared for

insurance purposes. Lawyers and judges found them available for the valuation of life estates and remainders for the purpose of inheritance taxation.

The expectation of life from year to year being approximated by these tables of mortality, the computation of the present worth of an annual income at a given rate of interest becomes possible.

The first step is to know what table of mortality is used in a particular state and what is the rate of interest upon which the computation is to be based.

This can be ascertained by the following table:

KEY TABLE

Showing rate of interest and Mortality Table used in the Different States for Inheritance Tax Cancellations.

State	Rate of Interest	Table of Mortality Used and Initial Referring to Table
Arkansas	5	B Actuaries' Combined Table.
Arizona	4	A Actuaries' Combined Table.
California	5	B Actuaries' Combined Table.
Colorado	5	B Actuaries' Combined Table.
Connecticut	5	D American Experience Table.
Delaware	6	American Experience Table.
Georgia	6	F Carlisle Table.
Hawaii	5	D American Experience Table.
Idaho	5	B Actuaries' Combined Table.
Illinois	5	E Carlisle Table.
Indiana	5	D American Experience Table.
Iowa	4	A Actuaries' Combined Table.
Kansas	5	D American Experience Table.
Kentucky	5	Dr. Wigglesworth's Table.
Louisiana	6	American Experience Table.
Maine	4	A Actuaries' Combined Table.
Maryland	6	F Carlisle Table.
Massachusetts	4	C American Experience Table.
Michigan	5	D American Experience Table.
Minnesota	5	D American Experience Table.
Missouri	5	B Actuaries' Combined Table.
Montana	7	Actuaries' Combined Table.
Nebraska	4	A Actuaries' Combined Table.
Nevada	7	American Experience Table.
New Hampshire	4	A Actuaries' Combined Table.
New Jersey	5	D American Experience Table.

State	Rate of Interest	Table of Mortality Used and Initial Referring to Table
New York	5	D American Experience Table.
North Carolina	5	D American Experience Table.
North Dakota	6	American Experience Table.
Ohio	5	B Actuaries' Combined Table.
Oklahoma	5	D American Experience Table.
Oregon	4	A Actuaries' Combined Table.
Pennsylvania	6	F Carlisle Table.
Rhode Island	5	D American Experience Table.
South Dakota	5	D American Experience Table.
Tennessee	6	F Carlisle Table.
Texas	4	A Actuaries' Combined Table.
Utah	3½	C American Experience Table.
Vermont	3½	C American Experience Table.
Virginia	6	F Carlisle Table.
Washington	4	A Actuaries' Combined Table.
West Virginia.....	....	Table prescribed by chap. 65, § 17, W. Va. Code, 1913.
Wisconsin	5	D American Experience Table.
Wyoming .....	....	

b. COMPOUND INTEREST RULE.

To ascertain the value of the principal at the end of any given number of years compounded annually at a given rate of interest:

Add the rate of interest to the principal and raise this sum to the power equal to the number of years.

Example: What is the value of \$100 at the end of five years compounded annually at the rate of 5 per cent?

First year — $\$100 + 5 = 105$.

Second year — $105 \times 105 = 110.25$.

Third year — $110.25 \times 105 = 115.76$.

Fourth year — $115.76 \times 105 = 121.55$.

Fifth year — $121.55 \times 105 = 127.63$.

Answer:

The value of \$100 at the end of five years compounded annually at the rate of 5 per cent is \$127.63.

c. PRESENT WORTH RULE.

To find the present worth of any amount due at any future date at a given rate of interest:

Divide the amount by itself plus the accumulation compounded annually at the given rate of interest.

Example:

To find the present worth of \$100 payable in five years at 5 per cent compounded annually?

We know from the previous example that \$100 compounded annually at 5 per cent for five years will produce \$127.63 at the end of that period.

Under the above rule $\$100$ divided by $\$127.63 = \78.43 .

Answer:

The present worth of \$100 payable in five years with interest at 5 per cent is \$78.43.

In the same way the present worth of \$100 payable in one year with interest at 5 per cent is \$95.2381.

d. THE LAW OF DISCOUNT.

Employing the two previous rules we find that the present worth of \$100 payable in five years at 4 per cent is \$81.11 while at 6 per cent the present worth is \$75.38.

Obviously the higher the discount the lower the present worth, the lower the discount the higher the present worth.

It is important to bear this in mind as it is a common error to suppose that the value of a life estate may be computed by multiplying the theoretical expectation of life by the annual income — which is an egregious error leading to absurd results.

For example the expectation of life of a widow of 30, is 35 years. If she has a life estate in \$100,000 her annual income at 5 per cent is \$5,000. So if \$5,000 be multiplied by the expectation of life, 35 years, the result is \$175,000 as the value of a life interest in \$100,000! Wrong and

absurd as this method is it has too frequently been employed in actual practice in estimating dower, etc., through sheer ignorance.

e. LAW OF THE CHANCE OF DEATH.

But the present worth of \$100 payable at the end of one year and annually thereafter is affected by another element when the beneficiary is a life tenant or annuitant. He may never live the year out to get his \$100.

His chance of dying before it is payable therefore becomes another element in ascertaining its present worth and here we must use the mortality table.

And here we are met with another error almost universal. The tables give the average expectation of life as a matter of information but this average expectation has nothing to do with the calculation of the value of a life estate or annuity.

By referring to the appended American Experience table of mortality, Table G, it will be seen that it starts with 100,000 persons living at 10 years of age and shows how many may be expected to die within the year and how many will survive to the age of 11 and so on until 95 years.

f. RULE OF THE CHANCE OF DEATH AS AFFECTING PRESENT WORTH.

Assume a life tenant or annuitant is 70 years of age. The American Experience table of mortality, Table G, shows that of 100,000 persons living at the age of ten 38,569 will survive to the age of 70; that 2,391 will die during the following year; and that 36,178 will be living at the age of 71.

The chance of a life tenant of 70 living to receive his annual income at the end of the year when he will be 71 is therefore expressed by this fraction.

$$\frac{36178}{38569} \text{ — living at 71.}$$

38569 — living at 70.

g. RULE FOR CALCULATING THE PRESENT VALUE OF LIFE ESTATES.

As we have seen by sub. c, the present worth of \$100 payable at the end of one year is \$95.2381.

But to a life tenant of 70 this present worth must be reduced by the chance of death within the year. His present worth of \$95.2381 must be reduced by the fraction of $\frac{36178}{38569}$ which represents his chance of living to get the money.

So, \$95.2381 divided by 38569 = \$0.00249568 and this multiplied by 36178 gives \$90.287711 as the present worth of \$100 payable to an annuitant of 70 at the end of the year.

The present worth of the installment payable the annuitant of 70 at the end of two years is worked out in the same way. The number living at the end of two years of persons aged 70 is 33730 out of the 38569 and the chance that the annuitant of 70 will live to get his second yearly payment of \$100 is expressed by the fraction $\frac{33730}{38569}$

The present worth of \$100 payable in two years at 5 per cent compound interest is \$90.7029. Working out this sum it is to be added to the present worth of one year's income; and so on to the end of the table.

It is needless to proceed further. The principle being understood we may now employ the tables in which the whole problem is worked out by the actuaries.

By referring to the American Experience table, Table D, of the present value of one dollar at various ages calculated as above we find that the present value of an income of one dollar a year at 5 per cent to an annuitant of 70 years of age is \$5.9802 and of an income of \$100 the value would be \$598.02.

2. Tables for Computing the Present Worth of Annuities.

The first table of mortality still in use was published by Dr. Price in 1771 as the “experience of life in Northampton.” It is not employed in making inheritance tax calculations, however.

In 1789 Dr. Edward Wigglesworth of Harvard University prepared a mortality table which is now used for inheritance tax purposes only in the state of Kentucky.

In 1815 Dr. Joshua Milne prepared and published the Carlisle tables of mortality.

In 1838 a committee of English actuaries prepared a table of mortality based on the combined experience of seventeen insurance companies.

In 1868 Sheppard Homans prepared the American Experience table based upon the experience of the Mutual Life Insurance Company.

The last three tables, as we have seen, are still in general use in the different states.

THE TABLES

The present worth of an annuity of one dollar at any given age at 4 per cent, 5 per cent, and 6 per cent is shown by the following tables to which reference is made by the table showing what standard is adopted in the several states:

Table a. Actuaries' combined table at 4 per cent.

Table b. Actuaries' combined table at 5 per cent.

Table c. American experience table at 4 per cent.

Table d. American experience table at 5 per cent.

Table e. Carlisle table at 5 per cent.

Table f. Carlisle table at 6 per cent.

Table g. American experience table of mortality and expectation of life.

TABLE A

ACTUARIES' COMBINED EXPERIENCE TABLE ON BASIS OF 4 PER CENT INTEREST

Age	Mean redemption period	Annuity, or present value of one dollar due at the end of each year during the life of a person of specified age	Reversion, or present value of one dollar due at the end of the year of death of a person of specified age	Age	Mean redemption period	Annuity, or present value of one dollar due at the end of each year during the life of a person of specified age	Reversion, or present value of one dollar due at the end of the year of death of a person of specified age
0...	23.179	\$14.72829	\$0.39507	50...	18.113	\$12.47032	\$0.48191
1...	30.552	17.30771	0.29586	51...	17.527	12.17919	0.49311
2...	35.626	18.69578	0.24247	52...	16.947	11.88408	0.50446
3...	37.572	19.15901	0.22465	53...	16.372	11.58531	0.51595
4...	38.702	19.41226	0.21491	54...	15.804	11.28325	0.52757
5...	39.352	19.55301	0.20950	55...	15.243	10.99789	0.53931
6...	39.654	19.61731	0.20703	56...	14.689	10.66982	0.55116
7...	39.691	19.62502	0.20673	57...	14.143	10.35931	0.56310
8...	39.625	19.61097	0.20727	58...	13.603	10.04630	0.57514
9...	39.264	19.53413	0.21022	59...	13.072	9.73131	0.58726
10...	38.891	19.45359	0.21332	60...	12.549	9.41474	0.59943
11...	38.507	19.36943	0.21656	61...	12.029	9.09765	0.61163
12...	38.113	19.28184	0.21993	62...	11.532	8.78052	0.62382
13...	37.710	19.19065	0.22344	63...	11.039	8.46412	0.63600
14...	37.298	19.09590	0.22708	64...	10.557	8.14888	0.64812
15...	36.877	18.99764	0.23086	65...	10.088	7.83552	0.66017
16...	36.447	18.89569	0.23478	66...	9.630	7.52476	0.67212
17...	36.010	18.79010	0.23884	67...	9.185	7.21699	0.68396
18...	35.565	18.68070	0.24305	68...	8.753	6.91298	0.69565
19...	35.113	18.56751	0.24740	69...	8.333	6.61301	0.70719
20...	34.652	18.45038	0.25191	70...	7.926	6.31716	0.71857
21...	34.186	18.32932	0.25656	71...	7.532	6.02612	0.72976
22...	33.711	18.20416	0.26138	72...	7.151	5.74003	0.74077
23...	33.230	18.07471	0.26636	73...	6.782	5.45928	0.75157
24...	32.742	17.94097	0.27150	74...	6.425	5.18402	0.76215
25...	32.248	17.80274	0.27682	75...	6.081	4.91463	0.77251
26...	31.747	17.65984	0.28231	76...	5.749	4.65125	0.78264
27...	31.239	17.51224	0.28799	77...	5.428	4.39383	0.79254
28...	30.725	17.35963	0.29386	78...	5.119	4.14286	0.80220
29...	30.205	17.20225	0.29991	79...	4.823	3.89858	0.81150
30...	29.678	17.03961	0.30617	80...	4.537	3.66071	0.82074
31...	29.147	16.87176	0.31262	81...	4.262	3.42900	0.82965
32...	28.608	16.69846	0.31929	82...	3.995	3.20258	0.83836
33...	28.067	16.51964	0.32617	83...	3.737	2.98024	0.84691
34...	27.516	16.33503	0.33327	84...	3.484	2.76106	0.85534
35...	26.961	16.14437	0.34060	85...	3.236	2.54366	0.86371
36...	26.401	15.94755	0.34817	86...	2.992	2.32795	0.87200
37...	25.834	15.74427	0.35599	87...	2.752	2.11384	0.88024
38...	25.263	15.53421	0.36407	88...	2.517	1.90115	0.88842
39...	24.685	15.31722	0.37241	89...	2.286	1.69107	0.89650
40...	24.101	15.09295	0.38104	90...	2.062	1.48540	0.90441
41...	23.511	14.86102	0.38996	91...	1.845	1.28432	0.91214
42...	22.915	14.62122	0.39918	92...	1.637	1.09024	0.91961
43...	22.313	14.37356	0.40871	93...	1.442	0.90647	0.92667
44...	21.708	14.11860	0.41852	94...	1.263	0.73687	0.93320
45...	21.103	13.85713	0.42857	95...	1.103	0.58435	0.93906
46...	20.499	13.58958	0.43886	96...	0.975	0.46182	0.94373
47...	19.896	13.31698	0.44935	97...	0.877	0.36698	0.94742
48...	19.298	13.03942	0.46002	98...	0.746	0.24038	0.95229
49...	18.703	12.75716	0.47088	99...	0.500	0.00000	0.96154

TABLE B

ACTUARIES' COMBINED EXPERIENCE TABLE WITH INTEREST
AT 5 PER CENT PER ANNUM.

AGE	\$1 annuity value	Present worth of remainder	AGE	\$1 annuity value	Present worth of remainder
10.	16.5559	.164006	55.	10.0775	.472499
11.	16.5020	.166572	56.	9.8157	.484966
12.	16.4455	.169264	57.	9.5505	.497596
13.	16.3862	.172087	58.	9.2818	.510393
14.	16.3241	.175042	59.	9.0100	.523335
15.	16.2593	.178127	60.	8.7355	.536407
16.	16.1917	.181349	61.	8.4592	.549563
17.	16.1212	.184707	62.	8.1816	.562782
18.	16.0476	.188209	63.	7.9033	.576032
19.	15.9711	.191854	64.	7.6249	.589292
20.	15.8913	.195651	65.	7.3469	.602530
21.	15.8085	.199598	66.	7.0700	.615716
22.	15.7222	.203703	67.	6.7946	.628829
23.	15.6325	.207977	68.	6.5215	.641854
24.	15.5392	.212418	69.	6.2509	.654718
25.	15.4422	.217037	70.	5.9831	.667473
26.	15.3414	.221842	71.	5.7185	.680077
27.	15.2364	.226837	72.	5.4574	.692504
28.	15.1274	.232030	73.	5.2003	.704748
29.	15.0141	.237425	74.	4.9473	.716795
30.	14.8963	.243033	75.	4.6988	.728627
31.	14.7740	.248856	76.	4.4550	.740235
32.	14.6469	.254907	77.	4.2160	.751619
33.	14.5150	.261191	78.	3.9821	.762756
34.	14.3779	.267719	79.	3.7538	.773626
35.	14.2354	.274506	80.	3.5308	.784247
36.	14.0873	.281559	81.	3.3129	.794621
37.	13.9333	.288892	82.	3.0993	.804793
38.	13.7730	.296522	83.	2.8890	.814812
39.	13.6064	.304458	84.	2.6809	.824714
40.	13.4329	.312718	85.	2.4739	.834575
41.	13.2523	.321321	86.	2.2678	.844389
42.	13.0641	.330280	87.	2.0626	.854163
43.	12.8684	.339600	88.	1.8580	.863905
44.	12.6656	.349258	89.	1.6553	.873537
45.	12.4562	.359226	90.	1.4562	.883040
46.	12.2408	.369487	91.	1.2609	.892355
47.	12.0200	.380002	92.	1.0718	.901539
48.	11.7939	.390767	93.	.8923	.909883
49.	11.5627	.401775	94.	.7262	.917797
50.	11.3265	.413024	95.	.5765	.924923
51.	11.0855	.424502	96.	.4530	.930667
52.	10.8398	.436200	97.	.3628	.935102
53.	10.5898	.448105	98.	.2381	.941019
54.	10.3357	.460204			

TABLE C.

AS ISSUED BY TAX COMMISSIONER OF MASSACHUSETTS.
 AMERICAN EXPERIENCE TABLES.—DISCOUNTED AT 4 PER
 CENT COMPOUND INTEREST.

[Explanation: To find the present worth of the life estate of a person, multiply the *principal* of the fund by the figure in column 1 opposite the age of the person at the nearest birthday. Example: A, who is 26 years, 4 months old at the death of B, is given by B's will a life estate in property valued at \$20,000. Solution: Opposite age 26 in column 1 is .7143; multiply .7143 $\times$ \$20,000 = \$14,286.]

To find the present worth of an annuity of a given amount for life, multiply the annuity by the figure in column 2 opposite the age at the nearest birthday of the person receiving the annuity. Example: A, who is 25 years, 7 months old at death of B, is given by B's will an annuity of \$800 for life. Solution: Opposite age 26 in column 2 is 17.857; multiply 17.857 $\times$ \$800 = \$14,285.60.]

Age	Column 1, life estates	Column 2, an- nuities	Age	Column 1, life estates	Column 2, an- nuities	Age	Column 1, life estates	Column 2, an- nuities
10...	.7766	19.414	40...	.6177	15.443	70...	.2523	6.307
11...	.7737	19.343	41...	.6088	15.220	71...	.2397	5.993
12...	.7708	19.269	42...	.5995	14.988	72...	.2274	5.685
13...	.7677	19.192	43...	.5900	14.749	73...	.2153	5.383
14...	.7645	19.112	44...	.5801	14.502	74...	.2034	5.086
15...	.7611	19.028	45...	.5699	14.248	75...	.1918	4.794
16...	.7577	18.942	46...	.5594	13.985	76...	.1802	4.505
17...	.7540	18.851	47...	.5486	13.714	77...	.1688	4.219
18...	.7503	18.757	48...	.5374	13.436	78...	.1574	3.936
19...	.7464	18.660	49...	.5260	13.151	79...	.1462	3.656
20...	.7423	18.558	50...	.5143	12.858	80...	.1352	3.380
21...	.7383	18.452	51...	.5002	12.559	81...	.1243	3.108
22...	.7337	18.342	52...	.4902	12.255	82...	.1137	2.842
23...	.7291	18.228	53...	.4776	11.944	83...	.1032	2.580
24...	.7244	18.109	54...	.4651	11.628	84...	.0927	2.318
25...	.7194	17.985	55...	.4523	11.307	85...	.0823	2.057
26...	.7143	17.857	56...	.4393	10.982	86...	.0720	1.799
27...	.7089	17.723	57...	.4261	10.653	87...	.0619	1.548
28...	.7034	17.585	58...	.4128	10.321	88...	.0524	1.310
29...	.6976	17.440	59...	.3994	9.985	89...	.0434	1.085
30...	.6916	17.291	60...	.3859	9.648	90...	.0347	0.867
31...	.6854	17.135	61...	.3724	9.309	91...	.0262	0.654
32...	.6789	16.973	62...	.3588	8.969	92...	.0181	0.454
33...	.6722	16.806	63...	.3452	8.630	93...	.0116	0.291
34...	.6653	16.632	64...	.3316	8.290	94...	.0055	0.137
35...	.6580	16.451	65...	.3181	7.952	95...	.....	.....
36...	.6505	16.263	66...	.3046	7.616			
37...	.6428	16.069	67...	.2913	7.282			
38...	.6347	15.868	68...	.2781	6.952			
39...	.6264	15.659	69...	.2651	6.627			

If an annuity is payable semiannually, add .250 to the annuity value in column 2.

If an annuity is payable quarterly, add .375 to the annuity value in column 2.

If an annuity is payable monthly, add .458 to the annuity value in column 2.

TABLE D.

AMERICAN EXPERIENCE TABLE.—DISCOUNTED AT 5 PER CENT COMPOUND INTEREST.

Age	Expectation of life in years	Present value of \$1 per annum	Age	Expectation of life in years	Present value of \$1 per annum
0.....	41.45	\$12.818	48.....	22.35	\$12.133
1.....	47.94	14.922	49.....	21.63	11.901
2.....	50.16	15.731	50.....	20.91	11.662
3.....	50.91	16.125	51.....	20.20	11.416
4.....	51.23	16.346	52.....	19.49	11.164
5.....	51.13	16.472	53.....	18.79	10.905
6.....	50.83	16.535	54.....	18.00	10.640
7.....	50.41	16.561	55.....	17.40	10.370
8.....	49.90	16.560	56.....	16.72	10.095
9.....	49.33	16.540	57.....	16.05	9.8145
10.....	48.72	16.505	58.....	15.39	9.5299
11.....	48.09	16.461	59.....	14.74	9.2413
12.....	47.45	16.415	60.....	14.10	8.9493
13.....	46.80	16.366	61.....	13.47	8.6545
14.....	46.16	16.316	62.....	12.86	8.3574
15.....	45.51	16.263	63.....	12.26	8.0588
16.....	44.85	16.207	64.....	11.67	7.7590
17.....	44.19	16.149	65.....	11.10	7.4588
18.....	43.53	16.088	66.....	10.54	7.1592
19.....	42.87	16.024	67.....	10.00	6.8607
20.....	42.20	15.957	68.....	9.47	6.5642
21.....	41.53	15.886	69.....	8.97	6.2705
22.....	40.85	15.813	70.....	8.48	5.9801
23.....	40.17	15.736	71.....	8.00	5.6942
24.....	39.49	15.655	72.....	7.55	5.4129
25.....	38.81	15.570	73.....	7.11	5.1359
26.....	38.12	15.482	74.....	6.68	4.8628
27.....	37.43	15.389	75.....	6.27	4.5926
28.....	36.73	15.292	76.....	5.88	4.3248
29.....	36.03	15.191	77.....	5.49	4.0588
30.....	35.33	15.084	78.....	5.11	3.7939
31.....	34.63	14.973	79.....	4.75	3.5311
32.....	33.92	14.857	80.....	4.39	3.2702
33.....	33.21	14.735	81.....	4.05	3.0135
34.....	32.50	14.608	82.....	3.71	2.7606
35.....	31.78	14.475	83.....	3.39	2.5105
36.....	31.07	14.336	84.....	3.08	2.2607
37.....	30.35	14.191	85.....	2.77	2.0098
38.....	29.63	14.039	86.....	2.47	1.7606
39.....	28.90	13.881	87.....	2.18	1.5175
40.....	28.18	13.716	88.....	1.91	1.2861
41.....	27.45	13.544	89.....	1.66	1.0670
42.....	26.72	13.365	90.....	1.42	0.85453
43.....	25.99	13.179	91.....	1.19	0.64497
44.....	25.27	12.985	92.....	.98	0.44851
45.....	24.54	12.783	93.....	.80	0.28761
46.....	23.81	12.574	94.....	.64	0.13605
47.....	23.08	12.357	95.....	.50	

TABLE E.

CARLISLE TABLE OF MORTALITY, WITH INTEREST AT 5 PER CENT PER ANNUM.

AGE	\$1 annuity value	Present worth of remainder	AGE	\$1 annuity value	Present worth of remainder
0	12.083	.37700	52	11.154	.42124
1	13.995	.28595	53	10.892	.43371
2	14.983	.23891	54	10.624	.44648
3	15.824	.19886	55	10.347	.45967
4	16.271	.17757	56	10.063	.47319
5	16.590	.16238	57	9.771	.48710
6	16.735	.15548	58	9.478	.50105
7	16.790	.15286	59	9.199	.51433
8	16.786	.15305	60	8.940	.52667
9	16.742	.15514	61	8.712	.53752
10	16.669	.15862	62	8.487	.54824
11	16.581	.16281	63	8.258	.55914
12	16.494	.16695	64	8.016	.57087
13	16.406	.17114	65	7.765	.58262
14	16.316	.17543	66	7.503	.59510
15	16.227	.17967	67	7.227	.60824
16	16.144	.18362	68	6.941	.62186
17	16.066	.18733	69	6.643	.63605
18	15.987	.19110	70	6.336	.65067
19	15.904	.19505	71	6.015	.66593
20	15.817	.19919	72	5.711	.68043
21	15.726	.20352	73	5.435	.69557
22	15.628	.20819	74	5.190	.70524
23	15.525	.21310	75	4.989	.71481
24	15.417	.21824	76	4.792	.72419
25	15.303	.22367	77	4.609	.73291
26	15.187	.22919	78	4.422	.74181
27	15.065	.23500	79	4.210	.75191
28	14.942	.24086	80	4.015	.76119
29	14.827	.24633	81	3.799	.77148
30	14.723	.25129	82	3.606	.78067
31	14.617	.25633	83	3.406	.79019
32	14.506	.26162	84	3.211	.79943
33	14.387	.26729	85	3.009	.80910
34	14.260	.27333	86	2.830	.81762
35	14.127	.27967	87	2.685	.82452
36	13.987	.28633	88	2.597	.82870
37	13.843	.29319	89	2.495	.83357
38	13.695	.30024	90	2.339	.84103
39	13.542	.30752	91	2.321	.84186
40	13.390	.31477	92	2.412	.83752
41	13.245	.32167	93	2.518	.83248
42	13.101	.32852	94	2.569	.83005
43	12.957	.33538	95	2.596	.82876
44	12.806	.34257	96	2.555	.83071
45	12.648	.35010	97	2.428	.83676
46	12.480	.35810	98	2.278	.84291
47	12.301	.36662	99	2.045	.85530
48	12.107	.37586	100	1.624	.87503
49	11.892	.38610	101	1.192	.89562
50	11.660	.39714	102	0.753	.91653
51	11.410	.40905	103	0.317	.93728

TABLE F.

CARLISLE TABLE OF MORTALITY, WITH INTEREST AT 6 PER
CENT PER ANNUM.

AGE	\$1 Annuity value	Present worth of remainder	AGE	\$1 Annuity value	Present worth of remainder
0	10.439	.35251	52	10.208	.36558
1	12.078	.25974	53	9.988	.37804
2	12.925	.21179	54	9.761	.39089
3	13.652	.17065	55	9.524	.40431
4	14.042	.14857	56	9.280	.41812
5	14.325	.13255	57	9.027	.43243
6	14.460	.12491	58	8.772	.44687
7	14.518	.12163	59	8.529	.46062
8	14.526	.12117	60	8.304	.47336
9	14.500	.12264	61	8.108	.48445
10	14.448	.12558	62	7.913	.49549
11	14.384	.12921	63	7.714	.50676
12	14.321	.13227	64	7.502	.51875
13	14.257	.13640	65	7.281	.53126
14	14.191	.14013	66	7.049	.54440
15	14.126	.14381	67	6.803	.55832
16	14.067	.14715	68	6.546	.57287
17	14.012	.15026	69	6.277	.58809
18	13.956	.15343	70	5.998	.60389
19	13.897	.15677	71	5.704	.62053
20	13.835	.16028	72	5.424	.63638
21	13.769	.16402	73	5.170	.65075
22	13.697	.16809	74	4.944	.66355
23	13.621	.17240	75	4.760	.67396
24	13.541	.17692	76	4.579	.68421
25	13.456	.18174	77	4.410	.69377
26	13.368	.18672	78	4.238	.70351
27	13.275	.19198	79	4.040	.71472
28	13.182	.19725	80	3.858	.72502
29	13.096	.20211	81	3.656	.73645
30	13.020	.20642	82	3.474	.74675
31	12.942	.21083	83	3.286	.75740
32	12.860	.21547	84	3.102	.76781
33	12.771	.22051	85	2.909	.77874
34	12.675	.22594	86	2.739	.78836
35	12.573	.23172	87	2.599	.79623
36	12.465	.23783	88	2.515	.80101
37	12.354	.24411	89	2.417	.80658
38	12.239	.25062	90	2.266	.81513
39	12.120	.25736	91	2.248	.81615
40	12.002	.26404	92	2.337	.81111
41	11.890	.27038	93	2.440	.80528
42	11.779	.27666	94	2.492	.80234
43	11.668	.28294	95	2.522	.80064
44	11.551	.28957	96	2.486	.80268
45	11.428	.29653	97	2.368	.80936
46	11.296	.30400	98	2.227	.81734
47	11.154	.31204	99	2.004	.82996
48	10.998	.32087	100	1.596	.85306
49	10.823	.33077	101	1.175	.87689
50	10.631	.34164	102	0.744	.90128
51	10.422	.35347	103	0.314	.92562

TABLE G.

AMERICAN EXPERIENCE TABLE OF MORTALITY.

AGE	Number living	Number dying during year	Expecta- tion	AGE	Number living	Number dying during year	Expecta- tion
10.....	100,000	749	48.72	53.....	66,797	1,091	18.79
11.....	99,251	746	48.09	54.....	65,706	1,143	18.09
12.....	98,505	743	47.45	55.....	64,563	1,199	17.40
13.....	97,762	740	46.80	56.....	63,364	1,260	16.72
14.....	97,022	737	46.16	57.....	62,104	1,325	16.05
15.....	96,285	735	45.51	58.....	60,779	1,394	15.39
16.....	95,550	732	44.85	59.....	59,385	1,468	14.74
17.....	94,818	729	44.19	60.....	57,917	1,546	14.10
18.....	94,089	727	43.53	61.....	56,371	1,628	13.47
19.....	93,362	725	42.87	62.....	54,743	1,713	12.86
20.....	92,637	723	42.20	63.....	53,030	1,800	12.26
21.....	91,914	722	41.53	64.....	51,230	1,889	11.67
22.....	91,192	721	40.85	65.....	49,341	1,980	11.10
23.....	90,471	720	40.17	66.....	47,361	2,070	10.54
24.....	89,751	719	39.49	67.....	45,291	2,158	10.00
25.....	89,032	718	38.81	68.....	43,133	2,243	9.47
26.....	88,314	718	38.12	69.....	40,890	2,321	8.97
27.....	87,596	718	37.43	70.....	38,569	2,391	8.48
28.....	86,878	718	36.73	71.....	36,178	2,448	8.00
29.....	86,160	719	36.03	72.....	33,730	2,487	7.55
30.....	85,441	720	35.33	73.....	31,243	2,505	7.11
31.....	84,721	721	34.63	74.....	28,738	2,501	6.68
32.....	84,000	723	33.92	75.....	26,237	2,476	6.27
33.....	83,277	726	33.21	76.....	23,761	2,431	5.88
34.....	82,551	729	32.50	77.....	21,330	2,369	5.49
35.....	81,822	732	31.78	78.....	18,961	2,291	5.11
36.....	81,090	737	31.07	79.....	16,670	2,196	4.75
37.....	80,353	742	30.35	80.....	14,474	2,091	4.39
38.....	79,611	749	29.63	81.....	12,383	1,964	4.05
39.....	78,862	756	28.90	82.....	10,419	1,816	3.71
40.....	78,106	765	28.18	83.....	8,603	1,648	3.39
41.....	77,341	774	27.45	84.....	6,955	1,470	3.08
42.....	76,567	785	26.72	85.....	5,485	1,292	2.77
43.....	75,782	797	25.99	86.....	4,193	1,114	2.47
44.....	74,985	812	25.27	87.....	3,079	933	2.18
45.....	74,173	828	24.54	88.....	2,146	744	1.91
46.....	73,345	848	23.81	89.....	1,402	555	1.66
47.....	72,497	870	23.08	90.....	847	385	1.42
48.....	71,627	896	22.35	91.....	462	246	1.19
49.....	70,731	927	21.63	92.....	216	137	.98
50.....	69,804	962	20.91	93.....	79	58	.80
51.....	68,842	1,001	20.20	94.....	21	18	.64
52.....	67,841	1,044	19.49	95.....	3	3	.50

3. How to Use the Tables.

a. THE NECESSARY FACTORS.

First ascertain the rate of interest to be employed and the mortality table to be used.

The tables give the present value of an income of \$1.00 per annum at the various ages, based on their expectation of life *from year to year*.

To find the present value of the annual income from a specified principal sum during the lifetime of a person, find the annual income on the basis of the given rate of interest and then multiply this annual income by the value of one dollar at the given age as shown in the table.

To find the value of dower make the same calculation and divide it by three.

To find the remainder deduct the life estate value from the principal sum.

b. ASCERTAINING THE VALUE.

A New York testator dying in January, 1917, leaves a net estate of \$300,000 to his widow, aged 30, for life; on her death remainder to their only child, then a minor.

By reference to the table of states we find that New York uses the American experience table on the basis of 5 per cent, and by reference to that table — Table D — we find that the present worth of an annuity of \$1.00 at 5 per cent to a life tenant 30 years of age is \$15.08425.

The annual income of \$300,000 at 5 per cent is \$15,000 which multiplied by the present worth of the annuity of \$1.00 gives \$226,263.75 as the value of the life estate and subtracting from the principal sum \$300,000, the value of the remainder is \$73,736.25.

4. Application to the Problems of Inheritance Taxation.

Taking the above example of a life estate and a remainder created by the will of a New York decedent in

favor of his widow of 30 and his minor child in \$300,000 net estate, the date of death being January, 1917:

Assume:

- a. That \$100,000 is personal property located in Arizona.
- b. That \$100,000 is personal property invested in Idaho.
- c. That \$100,000 is personal property located in Tennessee. What inheritance taxes must be paid in those states?
- d. What tax must be paid in the state of New York?
- e. What tax must be paid the United States government and in what proportions?
- f. What is the total tax due by life tenant and remainderman less any possible discounts for prompt payment?

a. THE VALUE AND TAX IN ARIZONA.

As to the \$100,000 invested in Arizona we find by reference to the table of states that Arizona uses the Combined Actuaries' table on the basis of 4% (Table A.) The annual income on \$100,000 at 4% is \$4,000. By reference to Table A we find that the annuity value of \$1.00 at the age of 30 is \$17.040. This multiplied by \$4,000 gives \$68,160 as the value of the life estate and subtraction gives the value of the remainder as \$31,840.

By reference to the table of rates and exemptions given in the abstract of the Arizona statute (see appendix) we find that the life tenant pays 1% over an exemption of \$5,000 giving the tax on the life estate \$631.60. The remainder pays the same rate less the same exemption or \$268.40.

b. THE VALUE AND TAX IN IDAHO.

As to the \$100,000 invested in Idaho we find that state uses the Actuaries' combined table on the basis of 5% — Table B. And by reference to that table we find the

annuity value of \$1.00 at the age of 30 to be \$14.8963. The income at the rate of 5% is \$5,000 which multiplied by the annuity value of \$1.00 at 30 years gives \$74,481.50 as the value of the life estate and the subtraction shows \$25,518.50 as the value of the remainder.

By the reference to the table of rates and exemptions in the abstract of the statute of Idaho (see appendix) we find that the widow and minor child each have an exemption of \$10,000. As to the life estate the tax on the first \$25,000 of the excess is 1% or \$250, leaving \$25,000 to be taxed at $1\frac{1}{2}\%$ or \$375 and 14,481.50 to be taxed at 2% or \$289.63, a total tax to the life tenant of \$914.63.

As to the remainder of \$25,518.50 the exemption of \$10,000 leaves \$15,518.50 taxable at 1% or \$155.19 as the tax against the remainder.

c. THE VALUE AND TAX IN TENNESSEE.

As to the \$100,000 invested in Tennessee we find that this state uses the Carlisle table on the basis of 6% — Table F. Referring to table F we find that an annuity of \$1.00 is valued at \$13.020; at 6% the annual income is \$6,000, which multiplied by the present worth of an annual income of \$1.00 gives \$78,120 as the value of the life estate and by subtraction the remainder value is \$21,880.

By reference to the table of rates and exemptions in the abstract of the Tennessee statute (see appendix), we find that the exemption to each is \$5,000. The life tenant's interest less \$5,000 is \$73,120 of which \$20,000 pays a tax at 1% or \$200 and the balance \$53,120 pays a tax of $1\frac{1}{4}\%$ or \$664.00, a total of \$864 as against the life tenant. The remainder, less the \$5,000 exemption, pays a tax of 1% on \$16,880 or \$168.80.

d. THE TAX DUE THE STATE OF NEW YORK.

The value of the life estate in New York as we have seen by the first illustration is \$226,263.75 and of the remainder \$73,736.25.

As death occurred in January, 1917, the rates and exemptions prescribed by the statute of 1916 are in force.

This gives the widow and child each an exemption of \$5,000. The life estate subject to tax is valued at \$221,263.75 and it pays these rates:

On the first	\$25,000 00	1% or	\$250 00
On the next	75,000 00	2% or	1,500 00
On the next	100,000 00	3% or	3,000 00
On the balance	21,263 75	4% or	850 55
			<hr/>
			\$5,600 55

The remainder less the exemption is \$69,736.25 on which the tax is \$1,044.73.

e. THE FEDERAL TAX AND VALUATION.

The inheritance tax levied by the United States government took effect September 8, 1916, and the amendment of March 3, 1917, increased the rates by fifty per cent. The assumed testator died in January, 1917, and his estate is therefore taxable under the 1916 statute and not under the 1917 amendment.

The entire net estate is \$300,000 and an exemption of \$50,000 is allowed, making the taxable estate \$250,000. The State taxes are not deducted by the ruling of the treasury department of Sept., 1917 — reversing its former rule. The net estate is therefore \$250,000 taxed as follows:

On the first	\$50,000	1% or	\$500
On the next	100,000	2% or	2,000
On the balance	100,000	3% or	3,000
			<hr/>
Total			\$5,500

The Federal Government, under the present statute does not concern itself with the apportionment of the

burden among the beneficiaries. The entire tax must be paid out of the residuary estate. In the present case it makes no difference, but if these were specific legatees in the supposed case they would escape payment of the tax altogether.

f. THE TOTAL TAX AND THE DISCOUNTS.

We now have the problem of the total tax and the discounts. The previous work shows the taxes as follows:

	Remaindermen	Life Tenant
Arizona	\$268 20	\$631 20
Idaho	155 19	914 65
Tennessee	168 80	864 00
New York	1,044 73	5,600 55
	<hr/>	<hr/>
Total	\$1,636 92	\$8,010 35
		1,636 92
		<hr/>
Total State Taxes.....		\$9,647 27
Federal Tax		5,500 00
		<hr/>
Grand Total		\$15,147 27

This total, however, may be somewhat reduced by the discounts allowed by the several statutes for the prompt payment of the tax.

By referring to the table of interest and discount of taxes or to the statutes in the appendix it will appear that Tennessee allows 5% discount if paid within three months; the other three states 5% discount if paid within six months, and the United States 5% per annum for the time payment anticipates one year. If these taxes are all paid immediately there will be a discount of 5% on all and a total saving of \$757.36.

The total tax due the four states and the Federal

government less the possible discount for prompt payment is therefore \$14,389.91.

These examples and illustrations should enable the average attorney to work out the more simple problems of inheritance taxation.

As to successive life estates and estates for joint lives the calculations require the use of other tables and higher mathematics and should be referred to an actuary or expert mathematician.

PART IV—THE PROPERTY

A. As to Situs.

1. Real Estate.
 - a. Not Taxable in Foreign Jurisdiction.
 - b. No Equitable Conversion.
 - c. Land Contracts.
 - d. Leases.
2. Tangibles.
3. Mortgages, Bonds and Commercial Paper.
 - a. Situs at Domicile of Owner.
 - b. Where the Land Lies.
 - c. Where Physically Present.
 - d. "Transient" or "Habitual" Presence.
4. Corporate Stock.
 - a. Of Domestic Corporations.
 - b. Foreign Corporations Owning Property Within the State.
 - c. Foreign Corporations Not Owning Property Within the State.
 - d. Apportionment of Corporate Property.
 - e. Pledged Securities.
5. Other Choses in Action.
 - a. Bank Deposits.
 - b. Debts.
 - c. Life Insurance.
 - d. Seat in the Stock Exchange.
 - e. Interest in the Estate of Another.
 - f. Partnership Interest.

B. As to Value.

1. Where the Value at Death Cannot be Ascertained.
2. Real Estate.
3. Tangibles.
 - a. Pictures.
 - b. Furniture.
 - c. Jewelry.
4. Stocks.
 - a. Active Securities.
 - b. Inactive Securities.
 - c. Closely Held Stocks.
5. Bonds.

B. As to Value — Continued.

6. Pledged Securities.
 - a. As to the Pledgor.
 - b. As to the Pledgee.
7. Partnerships.
8. Good Will.
 - a. A Taxable Asset.
 - b. Rules for Computation.
 - c. Number of Years' Purchase.
 - d. When the Profits are Speculative.
 - e. When no Profits are Shown.

C. Deductions.

1. Mortgages.
2. Debts.
 - a. Liability on Mortgage Bond.
 - b. Repairs to Real Estate.
 - c. Debts Paid by Will.
 - d. Doubtful Claims.
3. Funeral and Burial Expenses.
4. Administration Expenses and Counsel Fees.
5. Discount on Legacy.
6. Expenses of Litigation.
 - a. Where to Conserve the Estate.
 - b. Disputes Among the Beneficiaries.
7. Taxes.
 - a. Other Inheritance Taxes.
 - b. General Taxes and Assessments.
8. Commissions.
 - a. To Executors.
 - b. To Trustees.
 - c. On Sale of Real Estate.
9. Family Allowance.
10. Pro Rating Debts.
 - a. When the Local Debts Exceed the Local Assets.
 - b. When there are Local Assets and no Local Debts.
 - c. When Local Debts are Paid with Foreign Assets.
 - d. When there are both Local and Foreign Debts and Assets.
 - e. As to Partnerships.
11. Marshaling Assets to Reduce Tax.
 - a. When the Executor can do so.
 - b. When he cannot.

PART IV—THE PROPERTY

This is not limited to such property as is defined as taxable under the general tax laws of the state but extends to all the assets of the decedent of whatsoever name or nature.

Matter of Knoedler, 140 N. Y. 377; 35 N. E. 601.

Hinds v. Wilcox, 22 Mont. 4; 55 Pac. 355.

The court said in the Knoedler case: "The argument is made that it is only property which is liable to taxation under the General Tax Law of the State which can be taxed under the act relating to taxable transfers, * * * The Taxable Transfer Law has no reference or relation to the general law. The two acts are not *in pari materia*. While the object of both is to raise revenue for the support of the government, they have nothing else in common. Nearly sixty years intervened between the passage of the earlier and the later statute, and the latter was enacted under different conditions from the former. It taxes the right of succession to property, and measures the tax in the method specifically prescribed. *All property* having an appraisable value must be considered, whether it is such as might be taxed under the general law or not. Many kinds of property might be enumerated which are not assessable under the general law, but which are appraisable under the Collateral Inheritance Act."

"The word 'property' is broad enough to include everything which one person can own and transfer to another."

Hamilton v. Rathbone, 175 U. S. 414.

Inheritance taxes embrace every kind of interest in the estate of a decedent.

Attorney-General v. Pierce, 59 N. C. 240.

Commonwealth v. Smith, 20 Pa. St. 100.

A.—AS TO SITUS.

As we have seen, the law of Inheritance Taxation has been complicated by the conflicting theories as to the situs of personal property, the same state persisting in taxing the intangibles of resident decedents wherever located and, at the same time, the intangibles property of non-residents when physically present within the state. Of course the very fact that it is "physically present" anywhere conflicts the notion that any property is "intangible."

At all events the actual and theoretical situs of property subject to inheritance taxation presents some of the most perplexing questions in the entire scope of the subject. It is further complicated by the frequent amendment of the statutes so that one decision which apparently conflicts with another in fact construes a statute that has since been amended by the legislature.

The New York and Massachusetts decisions are of high authority in other states though those jurisdictions no longer tax the intangibles of non-residents—a fact that should constantly be borne in mind.

1. Real Estate.

a. NOT TAXABLE IN FOREIGN JURISDICTION.

The authorities are all agreed that the real estate of a resident decedent located in a foreign jurisdiction is not taxable and *a fortiori* as to a non-resident.

Matter of Swift, 137 N. Y. 77; 32 N. E. 1096.

Marr's Estate, 240 Pa. St. 38; 87 A. 621.

Succession of Westfeld, 122 La. 836; 48 S. 281.

People v. Kellogg, 268 Ill. 489; 109 N. E. 304.

Gallup's Appeal, 76 Conn. 617; 57 A. 699.

Lorillard v. People, 6 Dem. 268.

b. NO EQUITABLE CONVERSION.

The cases are also substantially unanimous in holding that even though the testator directs the sale of foreign real estate and the payment of money legacies out of the proceeds the doctrine of equitable conversion is not applicable in the law of inheritance taxation.

Connell v. Crosby, 210 Ill. 380; 71 N. E. 350.

McCurdy v. McCurdy, 197 Mass. 248; 83 N. E. 881.

Matter of Swift, 137 N. Y. 77; 32 N. E. 1096.

Matter of Offerman, 25 App. Div. 94; 48 Supp. 993.

Matter of Hallock, 42 Misc. 473; 87 Supp. 255.

Matter of Sutton, 3 App. Div. 208; 38 Supp. 277; aff. 149 N. Y. 618; 44 N. E. 1128.

In the Swift case, *supra* the court said:

“Nor is the argument available that, by the power of sale conferred upon the executors, there was an equitable conversion worked of the lands in New Jersey, as of the time of the testator’s death, and, hence, that the property sought to be reached by the tax, in the eye of the law, existed as cash in this state in the executor’s hands, at the moment of the testator’s death.”

The courts of Pennsylvania alone take a contrary view. In that state, where there is a direction to sell in the will, it is held that there is a conversion and therefore foreign real estate is subject to the tax.

Handley’s Estate, 181 Pa. St. 339; 37 A. 587.

In re Dalrymple, 215 Pa. St. 367; 64 A. 554.

In re Williamson, 153 Pa. St. 508; 26 A. 246.

Miller v. Commonwealth, 111 Pa. St. 321; 2 A. 492.

In re Vanuxem, 212 Pa. St. 315; 6 A. 876.

In *McCurdy v. McCurdy*, 197 Mass. 248; 83 N. E. 881, the court stated the doctrine thus:

“The Attorney-General, in behalf of the treasurer and receiver-general of the Commonwealth, contends that the doctrine of equitable conversion and exoneration should be applied to relieve the land from the encumbrance of

the mortgage, and that the executors should bring the proceeds of personal estate from the place of domiciliary administration in New Jersey and apply it to the payment of the debt here, so as to leave the land, free from the encumbrance, within the jurisdiction of the Commonwealth. The answer to this contention is, first, that the rights and obligations of all parties in regard to the payment of a tax of this kind are to be determined as of the time of the death of the decedent. This has been settled by our decisions. *Hooper v. Bradford*, 178 Mass. 95; 59 N. E. 678; *Howe v. Howe*, 179 Mass. 546; 61 N. E. 225; *Kingsbury v. Chapin*, 196 Mass. 533; 82 N. E. 700. Secondly, the law of equitable conversion ought not to be invoked merely to subject property to taxation, especially when the question is one of jurisdiction between different States. In *Custance v. Bradshaw*, 4 Hare, 315, 325, it was said that "equity would not alter the nature of the property for the purpose only of subjecting it to fiscal claims to which at law it was not liable in its existing state." In *Matter of Offerman*, 25 App. Div. (N. Y.) 94; 48 Supp. 993, the court says that equitable conversion should not be invoked merely for the purpose of subjecting the property to taxation. To the same effect is *Matter of Sutton*, 3 App. Div. (N. Y.) 208; 38 Supp. 277; affirmed in 149 N. Y. 618. In Pennsylvania a different rule is established. *Handley's Estate*, 181 Penn. St. 339; 37 A. 587."

c. LAND CONTRACTS.

Money due on land contracts to pay a resident decedent's estate the purchase price of land in a foreign jurisdiction is not taxable.

Matter of Wolcott, 94 Misc. 73; 157 Supp. 268.

And, conversely, land contracts to sell lands in Michigan owned by a non-resident decedent, are taxable in Michigan.

Re Stanton's Estate, 142 Mich. 491; 105 N. W. 1122.

On the other hand it has been held in Nebraska that money due on a land contract is a debt with its *situs* at the domicile of the owner.

Dodge County v. Burns, 131 N. W. 922.

So, where there was a contract to sell real estate and the deed was executed by the decedent but not delivered until the day after death and the property was located out of the state it was held that there was no conversion and the proceeds of the sale were not taxable at domicile.

Matter of Baker, 67 Misc. 630; 124 Supp. 827.

Of a nature similar to land contracts are shares in an unincorporated real estate trust where real estate is in Massachusetts; held, taxable against a non-resident holder as property within the state.

The court said: "It is not necessary to analyze with greater nicety the precise character of the property interest of a shareholder under each of the trusts. It is true of all of them that their rights are equitable interests in tangible property within this Commonwealth. While the legal title is in the trustees, their ownership is fiduciary, and the certificate holders are the ultimate proprietors of the property, which is held and managed for their benefit, and which must be divided among them at the termination of the trust. Their rights constitute not choses in action but a substantial property right. In this respect the case is indistinguishable in principle from shareholders in a domestic corporation. *Greves v. Shaw*, 173 Mass. 205; 53 N. E. 372. The fact that the certificates themselves were not within the Commonwealth is an immaterial circumstance."

Peabody v. Treasurer, 215 Mass. 129; 102 N. E. 435.

d. LEASES.

Obviously a lease may be an asset or a liability, a debt or property. If it is a perpetual lease, reserving rent, it is held to be real property.

Matter of Vivianti, 138 App. Div. 281; 122 Supp. 954; 146 App. Div. 942; 131 Supp. 1148; aff. 206 N. Y. 656.

The leasehold interest was in Japan and the court said, in holding it not taxable as against a resident decedent in New York:

“It would seem clear, upon all the testimony, that the premises in question were held by decedent under a perpetual lease, reserving rent, and that under the law of Japan, as well as under our own, the interest of the decedent therein was real property and not personal,” and the transfer thereof not taxable.

On the other hand a lease for twenty-one years from Columbia College of property in New York was held personal property.

Matter of Althause, 63 App. Div. 252; 71 Supp. 445; aff. 168 N. Y. 670; 61 N. E. 1127.

The fact that the lease is physically out of the state does not change its situs.

“The fact that the instrument of lease was located in New Jersey is immaterial, as it was merely evidence of the decedent’s interest in the premises situate in this county. A lease is not an indebtedness existing in favor of either of the parties thereto, but evidence of a contract or agreement by which each of the parties became entitled to certain rights. Like a certificate of stock in a corporation, it has no legal situs apart from the property to which it refers. The decedent’s interest in the leasehold premises therefore constituted property in this state (*Matter of Whiting*, 150 N. Y. 27; 44 N. E. 715; *Matter Clinch*, 180 N. Y. 300; 73 N. E. 35).”

Matter of Rosenbaum, N. Y. L. J., Aug. 7, 1914.

2. Tangibles.

Cattle in another state are held not taxable as against a resident decedent in Iowa since they do not follow the domicile of the owner, even though they have been sold and the proceeds brought into the state for distribution. This is not the general doctrine.

Weaver v. State, 110 Ia. 328; 81 N. W. 603.

The home port of a vessel engaged in interstate commerce is its *situs* for purposes of taxation.

Ayer & Lord Co. v. Kentucky, 202 U. S. 409; 26 S. Ct. Rep. 679.

And a vessel so located is "tangible."

People v. State Tax Commission, 174 App. Div. 320; 160 Supp. 854.

So a yacht of a nonresident if its home port is within the state is tangible.

Matter of Curry, N. Y. L. J., May 27, 1914.

Antique furniture of a nonresident is taxable when in New York.

Matter of Canfield, 96 Misc. 119; 159 Supp. 735.

The New York Statute, while it now taxes only the tangible personal property of non-residents, taxed the tangibles of its own residents in a foreign jurisdiction, prior to 1911, so when machinery in a factory in New Jersey was not so attached to the building that it could not be removed without injury to the property it was held personal property and taxable as part of the estate of a New York decedent.

Matter of Gumbinner, 92 Misc. 104; 155 Supp. 188.

3. Mortgages, Bonds and Commercial Paper.

As to the situs of mortgages for purposes of inheritance taxation there are three different theories. The mortgage may be held to have its situs at the domicile of the

owner, or where the land is situated, or where the bond and mortgage documents happen to be found. It is possible, under these conditions, that a mortgage held by a decedent's estate might pay taxes in three states.

a. SITUUS AT DOMICILE OF OWNER.

The original view of the New York courts was that the situs of the mortgage debt was the domicile of the owner. The court said in *Matter of Fearing*, 200 N. Y. 340; 93 N. E. 956, "whether the bonds are secured, as in the *Bronson* case, by mortgages of corporate property, or, as in the present case, by mortgages of the property of individuals, they represent, equally, debts of their makers, which, as choses in action, under the general rule of law, are inseparable from the personalty of the owner. Under that rule, as it was said in the *Foreign Held Bonds Case* (15 Wall. 300-320), of the bonds there, they 'can have no locality separate from the parties to whom they are due,' and the legal situs of the indebtedness, which they represent, is fixed by the domicile of the creditor. The legal title of these bonds in question was transferred by force of the laws of Rhode Island. As their legal and actual situs was in a foreign state, upon no theory were they within the operation of our Transfer Tax Law."

This doctrine is emphasized in several of the other earlier New York cases.

Matter of Bronson, 150 N. Y. 1; 44 N. E. 707.

Matter of Gibbes, 84 App. Div. 510; 83 Supp. 53; aff. 176 N. Y. 565; 68 N. E. 1117.

This is the rule adopted by the courts in several other states.

Orcutt's Appeal, 97 Pa. St. 179.

Gilbertson v. Oliver, 129 Ia. 568; 105 N. W. 1002.

Estate of Fair, 128 Cal. 607; 61 Pac. 184.

Estate of McCahill, 171 Cal. 482; 153 Pac. 930.

But, prior to the repeal of the tax upon the intangible property of non-residents within the state, the New York courts reversed the former doctrine and held that the mortgage debt was taxable when the bonds or notes were kept within the state.

Matter of Tiffany, 143 App. Div. 327; 128 Supp. 106; aff. 202 N. Y. 550, sustained sub. nom. *Wheeler v. Sohmer*, 233 U. S. 434.

b. WHERE THE LAND LIES.

In other states the situs of the mortgage debt is regarded as that of the land which secures it. The reasoning upon which this doctrine is founded is set forth by the Massachusetts court in *Kinney v. Stevens*, 207 Mass. 368; 93 N. E. 586 as follows:

“ While, for general purposes, the interest of the mortgagee is treated as personal property, it has a local situs, and carries with it an ownership of the land until it is redeemed by the payment of the debt in performance of the condition. The debt, which is the obligation of the debtor to pay, and the land, which is the security for the payment of the debt, are individual parts of a single valuable property in the mortgagee, which may be made available in different ways. The debt belongs with the mortgage, and it must coexist to give the mortgage validity. For that purpose it has a situs within the jurisdiction of the state where the land lies. It was held in *McCurdy v. McCurdy*, 197 Mass. 248; 83 N. E. 881, that the tax upon the succession to real estate in this Commonwealth, which belonged to a decedent in another state and was subject to a mortgage, was to be assessed only upon the value of the property above the mortgage. This was upon the ground that what passed upon the death of the mortgagor was only the value of his interest, which was the value of the real estate less the amount of the debt that was a charge upon it. This was equivalent to holding that, upon the death of the mortgagee, his interest in the real

estate, to the amount of his debt, would pass in succession to his representatives."

This rule has been adopted by the courts of Michigan and Maryland.

Re Rogers' Estate, 149 Mich. 305; 112 N. W. 931.

Re Merriam's Estate, 147 Mich. 630; 111 N. W. 196.

Helser v. State, 128 Md. 228; 97 A. 539.

On a similiar theory bonds of the state of Massachusetts kept by a non-resident at his domicile are held taxable.

Bliss v. Bliss, 221 Mass. 201; 109 N. E. 148.

C. WHERE PHYSICALLY PRESENT.

" Bonds and commercial paper are something more than mere evidences of indebtedness and may be taxed when they are physically present as well as at the domicile of the owner."

State ex rel. Graff v. Probate Court, 128 Minn. 371; 150 N. W. 1004.

And so in New York, under the former statute, when the bonds themselves were physically present within the state as well as the property it was held that they were taxable against a non-resident.

Matter of Morgan, 150 N. Y. 35; 44 N. E. 1126.

The distinction is pointed out in *Matter of Bronson*, 150 N. Y. 1; 44 N. E. 707, as follows:

" Whatever may be argued in support of the right to subject the bonds of domestic corporations to appraisement for taxation purposes under this act, when physically within the state, upon some theory that they are something more than the evidences of a debt and constitute a peculiar and appreciable species of property, within the recognition of the law as well as of the business community, such argument is certainly unavailing in this case; where the bonds themselves were at their owner's foreign domicile."

This doctrine was further extended and the *Matter of Fearing*, 200 N. Y. 340, overruled in *Matter of Tiffany*, 143 App. Div. 327; 128 Supp. 106, aff. 202 N. Y. 550; sustained sub. nom. *Wheeler v. Sohmer*, 233 U. S. 434.

Here notes of a nonresident decedent secured by mortgages on nonresident's land were in the safe deposit box of decedent in New York and were held taxable.

In the course of its discussion the United States Supreme Court says:

“For the purposes of argument we may assume that there are limits to this kind of power; that the presence of a deed would not warrant a tax measured by the value of the real estate it conveyed, or even that a memorandum of a contract required by the statute of frauds would not support a tax on the value of the contract because it happened to be found in the testator's New York strong box. But it is plain that bills and notes, whatever they may be called come very near to identification with the contract that they embody. An endorsement of the paper carries the contract to the endorsee. An endorsement in blank passes the debt from hand to hand, so that whoever has the paper has the debt.”

To the same effect:

Matter of Wall, 104 App. Div. 643; 94 Supp. 1166.

So mortgage bonds kept by a nonresident at her home in New Jersey were held not taxable although secured by New York real estate.

Matter of Preston, 75 App. Div. 250; 78 Supp. 31.

But a mortgage owned by a resident secured by foreign real estate was held taxable although in the hands of a nonresident agent of the deceased.

Matter of Corning, 3 Misc. 160; 23 Supp. 285.

Where bonds of a foreign corporation were to be issued in New York and the testator died before they were issued,

held that the title was in the foreign corporation and that they were not within the state for taxation purposes.

Matter of Hillman, 116 App. Div. 186.

d. "TRANSIENT" AND "HABITUAL" PRESENCE.

The courts have drawn a distinction between the "transient" presence of securities within the state and their "habitual" deposit there.

Matter of Leopold, 35 Misc. 369; 71 Supp. 1032.

When paper evidences of debt are in the possession and control of an agent of the owner in some state other than that of his domicile and are held there by such agent for management in connection with business there carried on they are regarded as property within the state for inheritance tax purposes.

Estate of Fair, 128 Cal. 607; 61 Pac. 184.

Matter of Morgan, 150 N. Y. 35; 44 N. E. 1126.

When a resident of Minnesota came to California for his health and brought with him for safe keeping Minnesota securities they were held "transiently" within the state and not taxable in California.

Estate of McCahill, 171 Cal. 482; 153 Pac. 930.

In discussing this distinction the Illinois court says in *People v. Griffith*, 245 Ill. 532; 92 N. E. 313 (*supra*):

"There was no evidence in the record showing that the money that was used in purchasing the stocks and bonds found in the safety deposit box of decedent was kept here for investment, but only for safe keeping. Under the New York decisions construing the statute previous to the adoption here, as well as from the wording of the statute, there is a basis for contending that the bonds of foreign corporations habitually in this state, even though here only for safe keeping, should be taxed. In reaching a conclusion on this question, however, it is necessary to keep in mind the familiar rule applicable to all forms of

taxation, and particularly special taxes, that the sovereign is bound to express its intention to tax in clear and unambiguous language. If there be doubt whether under the language it was intended to tax certain property the language should not be extended beyond the clear import of the words used."

4. Corporate Stock.

a. OF DOMESTIC CORPORATIONS.

All the authorities agree that a state may tax the transfer of stock owned by nonresidents in domestic corporations, even though the certificates are physically kept without the state.

Hawley v. Malden, 232 U. S. 1; 34 S. Ct. R. 201.

Ewald's Exr. v. City of Louisville (Ky.), 189 S. W. 438.

Matter of Clarkson (Ark.), 188 S. W. 834.

Dixon v. Russell, 78 N. J. L. 296; 73 A. 51.

This was the rule in New York prior to the repeal of the tax on intangibles of nonresidents in 1911.

"The attitude of a holder of shares of capital stock is quite other than that of a holder of bonds, towards the corporation which issued them. While the bondholders are simply creditors, whose concern with the corporation is limited to the fulfillment of its particular obligation, the shareholders are persons who are interested in the operation of the corporate property and franchises and their shares actually represent undivided interests in the corporate enterprise."

Matter of Bronson, 150 N. Y. 1; 44 N. E. 707.

To the same effect is:

Matter of Whiting, 150 N. Y. 27; 44 N. E. 715.

"The situs of stock in a corporation is the state of incorporation, for the purposes at least of the inheritance tax law."

McDongald v. Low, 164 Cal. 107; 127 Pac. 1027.

So it was held in Nebraska that stock in a Nebraska corporation, held in a foreign state by a foreign trustee under the deed of a resident decedent, was taxable.

Douglas County v. Kountze, 84 Neb. 506; 121 N. W. 593.

When stock of domestic corporations is found in the safe deposit box of a nonresident decedent in Illinois, held taxable.

People v. Griffith, 245 Ill. 532; 92 N. E. 313.

It is taxable even though the certificates are without the state.

Greves v. Shaw, 173 Mass. 205; 53 N. E. 372.

and though the stock is held in another's name

Matter of Newcomb, 71 App. Div. 606; 76 Supp. 222; aff. 172 N. Y. 608; 64 N. E. 1123.

The tax is imposed though the certificates are given for life to mother of the donor with remainder to a niece.

Matter of Bushnell, 73 App. Div. 325; 77 Supp. 4; aff. 172 N. Y. 649; 65 N. E. 1115.

When the life tenant dies before the remainderman they are still taxable when passing under the latter's will —

Matter of Wright, 214 N. Y. 714; 108 N. E. 1112.

For the purposes of inheritance taxation a national bank located within the state is a domestic corporation.

Matter of Cushing, 40 Misc. 505; 82 Supp. 795.

A share of stock in a corporation may be defined as a right which its owner has in the management, profits and ultimate assets of the corporation. The shares of stock represent interests in the earnings or the property of the corporation and a certificate is not stock itself, but only a convenient representation of it, though one may be a stockholder without having a certificate issued to him. The court finds that the decedent owned an "interest" in the

property of the bank within the meaning of the inheritance statute and that such interest is property within the jurisdiction of the state.

In re Culver, 145 Iowa 1, 123 N. W. 743.

b. FOREIGN CORPORATIONS OWNING PROPERTY WITHIN THE STATE.

On the theory that a certificate of stock is a mere muniment of title, like a title deed, not the stock itself, but mere evidence of its ownership (*Cook on Corporations* Sec. 13), many states tax transfers of stock in foreign corporations when such corporations own property within the state to the proportion that such value bears to the entire assets of the company.

A recent case in Idaho illustrates what nice questions may arise under such statutes.

The decedent, E. H. Harriman, a resident of New York, owned shares of stock in the Union Pacific, which corporation owned all the stock of the Oregon Short Line Railroad Company, which later corporation owned large and valuable property in Idaho. Held, that as the shares of stock of the Union Pacific owned by the deceased were not physically within Idaho at the time of his death and the deceased owned no stock in the Oregon Short Line, his interest therein because of his ownership of Union Pacific stock was not subject to tax under the Idaho statute.

State v. Dunlap, 28 Idaho, 784; 156 Pac. 1141.

c. FOREIGN CORPORATIONS NOT OWNING PROPERTY WITHIN THE STATE.

As a general rule the transfer of stock in such corporations is not taxed as against a nonresident decedent merely because the certificates are physically within the state.

Matter of James, 144 N. Y. 6; 38 N. E. 961.

Matter of Bishop, 82 App. Div. 112; 81 Supp. 474.

People v. Griffith, 245 Ill. 532; 92 N. E. 313; followed (1917) 276 Ill. 44 and 73.

But the reasoning of modern authorities would support such a tax when the certificate is within the jurisdiction of the taxing power. For example, in New York, though the inheritance tax was held not to cover the certificates of foreign corporations kept in New York by nonresident decedents, it was held that such certificates are taxable property.

In *People ex rel. Hatch v. Reardon*, 185 N. Y., 531, 450, the court said: "But even assuming that a tax on the sale of property is, in effect, a tax upon the property itself, what are certificates of stock and how may they be treated by the state for purposes of taxation? They may be treated as property from the function they perform and the use that is made of them. They may well be regarded as a distinct species of property, for they now represent the bulk of the property in the state and are the universal medium of transfer. As we said in a recent case: "The main use of certificates is for convenience of transfer, and they are treated by business men as property for all practical purposes. They are sold in the market, transferred as collateral security to loans and are used in various ways as property. They pass by delivery from hand to hand, are the subject of larceny, and are taxable generally in this state.'"

In *Simpson v. Jersey City Contracting Company*, 165 N. Y. 193, the plaintiffs were suing a foreign corporation and procured a warrant of attachment and a levy was made on certain certificates of stock in another foreign corporation, which certificates were physically in the possession of the Produce Exchange of the city of New York, and the question was, whether an attachment could be had of the physical pieces of paper. The court said at page 197: "Jurisdiction is founded on the presence of the thing in respect to which it is exercised. The action is *in rem* and seeks the place *rei sitae*. Did it not therefore

clearly have rights or interests within this state which could be impounded by our courts to abide the result of the litigation over the plaintiff's claim? I think so."

d. APPORTIONMENT OF CORPORATE PROPERTY.

When a corporation is incorporated in several states and the tax is against the estate of a nonresident stockholder it is based not on the market value of the stock but upon the proportionate value of the property of the corporation within the state.

Matter of Cooley, 186 N. Y. 220; 78 N. E. 939.

Matter of Thayer, 193 N. Y. 490; 86 N. E. 462.

Kingsbury v. Chapin, 196 Mass. 533; 82 N. E. 700.

Gardiner v. Carter, 74 N. H. 507; 69 A. 939.

The same is true as to joint stock associations organized in several states.

Matter of Willmer, 75 Misc. 62; 134 Supp. 686; aff. 153 App. Div. 804; 138 Supp. 649.

But when the corporation is incorporated in one state only the value of a nonresident's interest in a domestic corporation is fixed by the market price and not by the proportion of the corporate assets within the state.

Matter of Palmer, 183 N. Y. 238; 76 N. E. 16.

e. PLEDGED SECURITIES.

Securities pledged by a nonresident decedent within the state to secure a debt have been held not to be his property for the purposes of taxation.

Matter of Pullman, 46 App. Div. 574; 62 Supp. 395.

Matter of Ames, 141 Supp. 793.

The doctrine of the *Ames* and *Pullman* cases has just been expressly overruled by the New Jersey Court of Errors on the ground that it is in conflict with the rule as held by the New York Court of Appeals.

Security Trust Co., as Exr. of Morse v. Edwards, decided June 18, 1917, and not yet reported.

In this case stock in a New Jersey corporation was pledged by a Connecticut decedent in Connecticut but the New Jersey comptroller refused to allow its transfer unless the tax was paid. The court said:

“ The New York courts recognize that the pledgor has a residuary interest. In *Warner v. Fourth National Bank*, 115 N. Y. 251, the interest of a nonresident pledgor of notes held in pledge by a resident, was held to be subject to attachment in New York state. Judge Gray says: ‘ The title to property may remain in the pledgor, but the pledgee has a lien, or special property, in the pledge, which entitled him to its possession against the world.’ And further: ‘ The pledgor’s residuary interest in the pledge constitutes a claim or demand upon the pledgee, which is property, and hence may become the subject of attachment.’ And again: ‘ We think the attachment in question here operated to secure to the (attaching creditor) the lien upon the pledged property, to the extent of the interest of the (pledgor), and that interest was the right to the pledged property, or so much of it or of its proceeds from any collection as remained after the satisfaction of the pledgee’s claim for advances.’

“ See also opinion of the same judge in *Simpson v. Jersey City Contracting Co.*, 165 N. Y. 193, where it is said: ‘ The pledgee obtains a special property in the thing pledged, while the pledgor remains general owner.’

“ The most distinguished New York judge of all times, Chancellor Kent, expressly held in *Cortelyou v. Lansing*, 2 Caines Cases 200, 2 N. Y. Common Law Reports 802 (1805), that the legal property in a pledge does not pass as in the case of a mortgage with defeasance; that the general ownership remained with the pledgor and only a special property passed to the pledgee, and further that the pledgor’s interest passed to his administrators.

“ If the stock had a situs here, where else can be the situs of the residuum?

“ If the interest of the pledgee is less than absolute and unqualified ownership, how can the residuary interest of the pledgor have a situs other than that of the subject of the pledge? ”

The opinion thus supports its ruling from other authorities after an extended review of the English cases:

“ In *Meisel v. Merchants National Bank*, 85 N. J. L. 253, 88 A. 1067 (Court of Errors, 1913), it was said in effect that the pledgor has the right to bring a possessory action against the pledgee to recover the stock itself, providing only he makes and keeps good a tender of the debt.

“ In *McCrea v. Yule*, 68 N. J. L. 465, 53 A. 210, the Supreme Court in 1902, in a case of an assignment of a chose in action as collateral security, said (p. 467):

“ ‘ A pledge of personal property, assigned as collateral security, has the right to collect the interest, dividends and income accruing on the collateral assigned, accounting to the pledgor upon the redemption of the pledge. In making such collections the pledgee is a trustee of the pledgor to see to the proper applications of the funds collected or to refund the same to the pledgor if the debt be otherwise paid.’ In *Mechanics’ B. & L. v. Conover*, 14 N. J. Eq. 219 (Reversed on the other grounds, *Herbert v. Mechanics’ B. & L. Assn.* 17 N. J. Eq. 497) the court said that when shares of stock are pledged, they ‘ remain the property of the shareholder for every purpose excepting that of defeating the lien ’ of the pledgee.

“ In the United States Supreme Court, drawing the familiar distinction between a chattel mortgage and a pledge, Mr. Justice Pitney says, in *Dale v. Pattison*, 234 U. S. 399, 405; 34 S. Ct. R. 785:

“ On the other hand where title to the property is not presently transferred, but possession only is given, with

power to sell upon default in the performance of a condition, the transaction is a pledge, and not a mortgage.”

The law of Connecticut appears to be to the same effect. In *Robertson v. Wilcox*, 36 Conn. 426 (1870), the highest court of that state, at page 430, said:

“A pledge of property does not carry with it the title to the thing pledged. The title remains as before. All that passes to the pledgee is the right of possession, coupled with a special interest in the property, in order to protect the right.”

The method of computing the tax in the above case is instructive. The court thus states the process:

“Morse left no real estate whatever, either within or without New Jersey. His gross estate amounted to \$64,523.85, and by the will went entirely to collaterals or those unrelated to the testator. The estate consisted largely of certain securities, viz., corporate stock and four bonds appraised in the aggregate at \$63,285.50. All of these securities had been pledged by Morse in his lifetime, accompanied by a power of attorney in blank, to the Phoenix National Bank of Hartford, Connecticut, to secure his promissory note of \$37,500 upon which there was due \$5.21 of interest, together with all of the principal amount, at the time of his death. It does not appear that this note had been called prior to the death of Morse or that the pledgee had caused any of the securities to be transferred to it or that any demand had been made upon him prior to death for the payment of the note.

“Among the securities so pledged were New Jersey stocks appraised in aggregate at \$28,249.

“The Comptroller appraised the New Jersey stocks at the figures above mentioned, and the decedent’s interest in the New Jersey stocks at the sum of \$11,507. This amount was obtained by pro-rating the amount of the loan together with such portion of the general deductions as the other

assets were insufficient to meet, over all of the stocks pledged. The value of the equity in the New Jersey stocks was arrived at by applying to the equity in all of the stocks the fraction represented by the value of the New Jersey stocks over the value of all the securities pledged.

“Treating the gross estate for the purpose of taxation as the value of the equity in all of the stocks, plus the value of the other assets the Comptroller arrived at the proportion demanded by the method of computation prescribed for nonresident estates in section 12 of the Act (namely, the ratio of the New Jersey property to the total property wherever situate), which proportion was found to be 42.6 per cent. The tax was then calculated in the manner prescribed in that section and found to be \$527.55.

“The Comptroller refused to consent to the transfer of the New Jersey stocks to executor of the decedent, unless such tax upon the decedent’s equity therein was paid, and accordingly it was paid.

“The amount of the tax, i. e., the method of computation, is not challenged, and with that we are not concerned.”

It is believed that the New Jersey court states a sounder doctrine than that of the *Pullman and Ames* cases and that it will be sustained in New York.

But in any event when redeemed by the executor the title relates back to the date of death.

Matter of Hurcomb, 36 Misc. 755; 74 Supp. 475.

Where the court said:

“While the debt secured by the pledge of collateral is unliquidated, and the extent of the equity is unascertainable, as was the case in the *Matter of Pullman*, it may well be that the taxation of any equity therein would be postponed until the transaction had been completed and the value of the decedent’s interest therein determined. But after the transaction had been closed, and the interest of

the estate therein fixed by redemption of the collateral — to paraphrase the language of Justice Patterson — those securities are no longer liable to be resorted to by creditors; the title to them has reverted to the estate of the pledgor, and they are in a situation to be taxed as property of the estate. They can no longer be required to pay the debts to which they were pledged as collateral, and there is no longer a necessity for protecting the creditor's security, his relation to the matter having terminated."

The pledged property cannot be redeemed with the proceeds of tangible assets which are taxable within the state and thus free exempt property from the lien, but the debt must be deemed to be paid with the pledged property for purposes of taxation.

Matter of Burden, 47 Misc. 329; 95 Supp. 972.

And the surplus value of the pledged assets is property within the state for purposes of taxation.

Matter of Bennett, N. Y. L. J., Oct. 24, 1906; aff. 120 App. Div. 904; 105 Supp. 1107.

5. Other Choses in Action.

a. BANK DEPOSITS.

Money deposited in banks is taxable at the place of deposit.

Matter of Burr (prior to 1911), 16 Misc. 89; 30 Supp. 811.

Re Rogers' Estate, 149 Mich. 305; 112 N. W. 931.

Re Speers, 4 Ohio N. P. 238.

And also at domicile of decedent, even though it involves double taxation.

Mann v. Carter, 74 N. H. 345; 68 A. 130.

In discussing the theory of such taxation (prior to 1911) the New York Court of Appeals said:

"If he had deposited *in specie*, to be returned *in specie*, there can be no doubt that the money would be property

in this state subject to taxation. But, instead, he did as business men generally do, deposited his money in the usual way, knowing that, not the same, but the equivalent, would be returned to him upon demand. While the relation of debtor and creditor technically existed, practically he had his money in the bank and could come and get it when he wanted it. It was an investment in this state subject to attachment by creditors. If not voluntarily repaid, he could compel payment through the courts of this state. The depositary was a resident corporation, and the receiving and retaining of the money were corporate acts in this state. Its repayment would be a corporate act in this state. Every right springing from the deposit was created by the laws of this state. Every act out of which those rights arose was done in this state. In order to enforce those rights, it was necessary for him to come into this state. Conceding that the deposit was a debt; conceding that it was intangible, still it was property in this state for all practical purposes, and in every reasonable sense within the meaning of the Transfer Tax Act."

Matter of Houdayer, 150 N. Y. 37; 44 N. E. 718.

The rule is applied even though depositor holds a certificate of deposit at his non-resident domicile.

Matter of Hewitt, 90 Supp. 1100; aff. 181 N. Y. 547.

b. DEBTS.

When due from residents to a non-resident decedent, debts are property within the state for purposes of inheritance taxation.

People ex rel. Gräff v. Probate Court, 128 Minn. 371; 150 N. W. 1094.

Blackstone v. Miller, 188 U. S. 189.

Matter of Page, N. Y. Law Journal, April 13, 1912.

Matter of Daly, 100 App. Div. 373; 91 Supp. 858; aff. 182 N. Y. 524; 74 N. E. 1116.

In the Daly case the court said:

“ The continous tendency of the courts of this State has been to embrace within the Transfer Tax Law directly or indirectly all property of every species found herein upon the death of the decedent. That policy and rule has never been departed from or infringed upon, save by the application of what the court regarded as an inexorable rule of law, which upon thorough examination turns out to be a fiction. When that fact appeared, and the statute is the subject of construction wherein it is made to appear, it becomes controlling not only as an adjudication of the highest court of the land, but also as an adjudication of the construction adopted by the courts of this state. It is not so much a difference of construction as it is of reason producing it, and when the reason for a given construction is shown to fail, and the policy of the statute is clear, the adjudication of the United States court becomes supreme and is made the law of the land with respect to the particular questions involved.

“ Under these circumstances, we think its rule must obtain, and so obtaining it necessarily follows that debts due within this state from solvent debtors, which are converted into money herein, and must of necessity be enforced in this jurisdiction, or not at all, become property within the meaning of the Transfer Tax Law, and as such are taxable.”

On the other hand it has been held that the situs of a debt is the domicile of the creditor.

Citizens Bank v. Sharp, 53 Md. 521.

Kintzing v. Hutchinson, Fed. Cas. 7384.

As a matter of fact it is both for purposes of inheritance taxation.

c. LIFE INSURANCE.

A policy of life insurance held by a nonresident in a local company is not property within the state subject to the inheritance tax.

In *Matter of Gordon*, 186 N. Y. 471; 79 N. E. 722, the court said:

“ If the contract in this case is subject to the imposition of a transfer tax, then any contract of insurance issued to a non-resident, passing to and held by his non-resident representatives or assigns, and being administered and enforceable in a foreign jurisdiction, whether in the state of Texas or California, or in some foreign country, would afford the basis of taxation in this state, provided only the policy was issued by a New York corporation and assess could be obtained by the tax collector to its proceeds. No distance of domicile of the assured and his transferees or beneficiaries, and no completeness of foreign jurisdiction over administration and enforcement, and no lack of anticipation of such a result upon the part of the assured, would be a bar to the attempted application of the taxing power. It requires no great imaginative processes to picture the limits and disapproval and friction to which this theory would lead if logically carried to its full length.

“ It was undoubtedly the intent of the legislature that the statute under consideration should be liberally construed to the end of taxing the transfer of all property which fairly and reasonably could be regarded as subject to the same, and this court has unequivocally placed itself upon record in favor of construing the statute in the light of such intent. But the proposition now propounded, if adopted, would lead far beyond any point which has thus far been reached, and we do not believe that it would be wise or practicable to adopt it.”

To the same effect are:

Matter of Horn, 39 Misc. 133; 78 Supp. 979.

Matter of Rhoades, 190 N. Y. 525; 83 N. E. 1130.

Matter of Abbett, 29 Misc. 567; 61 Supp. 1067.

A policy on the life of a resident payable to the estate is taxable.

Matter of Knoedler, 140 N. Y. 377; 35 N. E. 601.

But not if assigned to a beneficiary.

Matter of Parsons, 117 App. Div. 321; 102 Supp. 168.

Matter of Elting, 78 Misc. 692; 140 Supp. 238.

d. SEAT IN THE STOCK EXCHANGE.

This is universally held to be property.

Nashua Bank v. Abbott, 181 Mass. 531; 63 N. E. 1085.

Powell v. Waldron, 89 N. Y. 328.

People v. Feitner, 167 N. Y. 1; 60 N. E. 265.

Page v. Edmunds, 187 U. S. 596; 23 S. Ct. R. 200.

It is taxable as such in New York against a resident.

Matter of Glendinning, 68 App. Div. 125; 74 Supp. 190.

Matter of Curtis, 31 Misc. 83; 64 Supp. 574.

And also when owned by a non-resident prior to 1911.

Matter of Hellman, 174 N. Y. 254; 66 N. E. 809.

e. INTEREST IN THE ESTATE OF ANOTHER.

Where a non-resident died leaving a legacy to another non-resident who died the next day the interest of the deceased devisee in the estate of the testator had not been determined and therefore was not property within the state.

Matter of Zefita, 167 N. Y. 280; 60 N. E. 508.

Matter of Thomas, 3 Misc. 388; 240 Supp. 713.

But where a non-resident bequeathed the residuary to his son also a non-resident and the son died after the amount of the residuary estate had been ascertained, though still in the hands of the executors, it was held that the interest of the son was property within the state transferred at his death and taxable.

Matter of Clinch, 180 N. Y. 300; 73 N. E. 35.

The distinction thus made has not generally been followed. So in Pennsylvania, when a brother of the decedent, who was a resident of New York, died two weeks

before his sister, who was a resident of Pennsylvania, it was held that the sister inherited at the moment of the brother's death, and that it was wholly immaterial that the net amount of his estate had not been ascertained.

Milliken's Estate, 206 Pa. St. 149; 55 A. 853.

f. PARTNERSHIP INTEREST.

The interest of co-partners is in the surplus after payment of debts, and is therefore intangible, even if the co-partnership owns real estate.

Darrow v. Calkins, 154 N. Y. 503; 49 N. E. 61.

Russell v. McCall, 141 N. Y. 437.

Preston v. Fitch, 137 N. Y. 41.

Menagh v. Whitehall, 52 N. Y. 146.

Secor v. Tradesmen's National Bank, 92 App. Div. 241.

Although the question has not been litigated the New York state comptroller has given an opinion that, under this doctrine, real estate owned by a partnership though situated outside the state is to be included in the valuation of the assets of the firm in which a decedent had an interest.

Matter of Dusenberry, 2 N. Y. State Dept. Rep. 501.

The interest of a nonresident in a New York partnership is taxable under the present N. Y. statute, chapter 664, L. 1915.

Matter of Du Bois, *New York Law Journal*, Feb. 9, 1917; 163 Supp. 668.

The same rule prevails in Pennsylvania by judicial construction.

In re Small, 151 Pa. St. 1; 25 A. 23.

But where co-partners take title to real estate in their individual names, as tenants in common, it does not become partnership property in the absence of evidence of intent.

Matter of Lowenfeld, *New York Law Journal*, June 27, 1916.

But where real estate is purchased with partnership funds and the title is taken in the name of one of the partners a resulting trust arises in favor of the other partners in proportion to their interest in the partnership.

People v. Sholem, 244 Ill. 502; 91 N. E. 704.

Local assets of a partnership with its main office in Boston and branch office in New York are taxable in New York.

Matter of Clark, *New York Law Journal*, Feb. 9, 1912.

B.— AS TO VALUE.

Though the tax is on the transfer and not upon the property the value of the property transferred is used as a yard-stick whereby to measure the value of the transferred interest. As we have seen, the value must, unless the statute specifies otherwise, be at the date of death and no subsequent change can affect it.

Hanberg v. Morgan, 263 Ill. 616; 105 N. E. 720.

Matter of Penfold, 216 N. Y. 163; 110 N. E. 497.

1. Where the Value at Death Cannot be Ascertained.

It is often impossible to ascertain the value at the date of death. A claim of the estate may be involved in litigation, in which case taxation must be suspended.

Matter of Westurn, 152 N. Y. 93, 103; 46 N. E. 315.

Matter of Skinner, 106 App. Div. 217; 94 Supp. 144.

Or the claim may be an interest in the estate of another decedent which has not yet been settled.

An interesting question recently arose under such suspension of taxation in the estate of Mary D. Daly, which consisted chiefly of her interest in the estate of her deceased husband, Augustine Daly, the playwright.

The surrogate's opinion, reported in the *New York Law Journal* of July 28, 1916, is in part as follows:

“An order was entered on a transfer tax appraiser's report on December 30, 1908, which, among other things,

suspended from appraisal and taxation decedent's interest in the estate of Augustine Daly, her deceased husband. The grounds of such suspension were stated to be that the value of this interest was not then ascertainable. A supplemental report was subsequently filed from which it appears that said interest was valued at \$82,530.48, and that the date of accrual was therein fixed as of June 30, 1914. From this report and the order entered thereon fixing tax the executor appeals. The principal question involved in the appeal is whether the value of the interest above referred to should be considered as of the date of decedent's death or at the time the last payment was made under the terms of which the said two estates settled their differences and which was the date designated by the appraiser to be the date of accrual. In view of the fact that at an earlier date it was impossible to fix the value of the decedent's interest in her husband's estate, we must then inquire, what was the date at which the value of this interest could be ascertained? Apparently the date when the parties by the agreement mentioned made the last payment. This payment represents the value of decedent's interest in her husband's estate at the time of her death, although at that time not ascertainable."

2. Real Estate.

The assessed value for ordinary taxation is not controlling on the market value.

McGhee v. State, 105 Ia. 9; 74 N. W. 695.

But in practice a wide discrepancy between the value fixed by an expert appraiser and the assessed valuation equalized to the 100 per cent. basis would require explanation.

When obtainable an actual bona fide sale of property in the vicinity prior to death is the best evidence.

Matter of Arnold, 114 App. Div. 244; 99 Supp. 704.

It is the equity of redemption only that is taxed and mortgages should be deducted from the value of the real estate.

Matter of Sutton, 3 App. Div. 208; 38 Supp. 277; aff. 149 N. Y. 618; 44 N. E. 1128.

And this is so even when the will directs that the mortgage be paid out of personalty.

Matter of Offerman, 25 App. Div. 94; 48 Supp. 993.

Matter of Murphy, 32 App. Div. 627; 53 Supp. 1110; affirming on opinion in matter of Offerman, aff. 157 N. Y. 679; 51 N. E. 1092.

When testator's will directs that a mortgage on foreign real estate be paid out of local personal assets it was allowed as a debt of the estate by the Surrogate's court of New York County.

Matter of Hunt, 97 Misc. 233; 160 Supp. 1115.

This case is of doubtful authority, for it has long been held that even taxes due on foreign real estate are not a deduction from the personal assets.

McElroy on the Transfer Tax Law, p. 488.

The theory is that for the purpose of the transfer tax the parties interested in the estate take their interest in the property in the form it had at the death of the decedent, and no direction in the will as to the application of the personalty for the benefit of the realty can defeat or qualify the rights of the State in the imposition and collection of the tax.

Matter of Livingston, 1 App. Div. 568; 37 Supp. 463.

Matter of Boudouine, 5 App. Div. 622; 39 Supp. 1121.

Matter of Kemp, 7 App. Div. 609; 40 Supp. 1144; aff. 151 N. Y. 619; 45 N. E. 1132.

While sales of property in the neighborhood shortly prior to the testator's death are the best evidence of value the price for which the property itself sells after death is no evidence at all and the fact that it sells for less than

the amount of the appraisal is not ground for modifying the taxing order.

Matter of Meyer, 209 N. Y. 386; 103 N. E. 713.

Matter of Barnum, 127 App. Div. 418; 114 Supp. 33.

The uncontradicted affidavit of an expert is sufficient proof of value.

Matter of Gale, 83 Misc. 686; 145 Supp. 301.

The interest of the decedent and its nature must be established before the appraiser by competent evidence.

Matter of Willets, 119 App. Div. 119; 100 Supp. 850; 104 Supp. 1150; aff. 190 N. Y. 527; 83 N. E. 1134.

Where the decedent owned an undivided interest in real estate, subject to certain mortgages, a discount of 15 per cent. was allowed by the appraiser on the value of the interest because a judicial sale would be necessary to realize on it. It was claimed on appeal to the Surrogate that the deduction should be made of the 15 per cent. the equity of redemption after the amount of the mortgage had been deducted; but it was held that it was the entire property that must be sold and not the equity and therefore that the deduction from the entire value was correct. This was reversed by the Appellate Division.

Matter of Gilbert, 176 App. Div. 850.

An instructive case in the valuation of fractional interests in real estate arose before the New York county surrogate in *Matter of Meyer Loeb*, N. Y. Law Journal, January 13, 1914: "This is an appeal from an order fixing tax upon the ground that the appraiser erred in his valuation of decedent's real estate. An expert employed by the State Comptroller submitted an affidavit giving his estimate of the value of certain real estate of which the decedent was entitled to a one-half interest, but he did not give the value of the one-half interest. On behalf of the estate an affidavit was submitted giving the opinion of another expert as to the value of the one-half interest. It

appeared from the evidence of this expert that the value of the one-half interest is less than one-half the value of the entire plot. The appraiser disregarded this evidence and ascertained the value of decedent's one-half interest to be one-half the value of the entire plot as appraised by the State Comptroller's expert. This was incorrect, as the only evidence before him was to the effect that the one-half interest is worth less than one-half the value of the entire plot. The order fixing tax will be reversed and the appraiser's report remitted to him for the purpose of ascertaining the value of decedent's one-half interest in the real estate of which he died seized."

3. Tangibles.

a. PICTURES.

The valuation by an expert as of the date of death was held the best evidence and the price for which the pictures actually sold ten months afterwards was held not competent.

Matter of Anderson, New York Law Journal, Dec. 20, 1916.

b. FURNITURE.

An instructive decision was recently made by the New York County Surrogate's Court on the valuation of the collection of antique furniture owned by the late Richard Canfield, formerly of Saratoga, New York, but at the time of his death a non-resident.

The Surrogate's opinion as reported in the New York Law Journal, June 22, 1916, is as follows:

"At the time of his death he had his domicile in Rhode Island. He owned a collection of antique furniture which was located in this state and a competent appraiser made an affidavit in which he alleged that the market value of such furniture at the date of decedent's death was \$65,175. Testimony disclosed that this furniture was sold in August,

1915, for \$159,999, and the appraiser accepted these figures as the value of the furniture for the purposes of the transfer tax. The affidavit submitted by the expert employed by the estate was the only evidence as to the value of the furniture at the date of decedent's death. The State Comptroller did not produce testimony to show that the appraisal by the expert was incorrect but relied upon the testimony as to the price for which the furniture sold in August, 1915. * * * As the only competent testimony submitted to the appraiser in regard to the value of the furniture showed that its market value at the date of decedent's death was \$65,175 he should have accepted that valuation and not the price at which it was sold nine months later. The decedent also owned certain porcelains which were appraised by the expert employed on behalf of the estate at \$12,915. The appraisal represented their value at the date of decedent's death. The executor submitted an affidavit showing that the porcelains were sold for much less than their appraised value but the transfer tax appraiser accepted the value of \$12,915. This was correct."

c. JEWELRY.

In *Matter of Moore*, 97 Misc. 238, the question of the value of the stock of Tiffany & Co., was in question. On this subject the Surrogate said:

"The par value of this stock is \$1,000 a share and the appraiser reported that its market value at the date of decedent's death was \$7,683.45 per share. The stock is not customarily bought and sold in the open market. The sale of three shares in 1914 at an average price of \$5,570 a share cannot be accepted as the market value of the stock on the 30th of March, 1914, the date of decedent's death, as the record does not show the circumstances under which the sale was made. The appraiser was therefore obliged to rely upon the statement of assets and liabilities of the

company in ascertaining the value of the stock. In this statement the company claims that the sum of \$2,300,000 should be deducted from the assets as a reserve fund. The appraiser allowed a deduction of \$2,102,463.48 as a reserve against depreciation and refused to allow the other reduction. The value of the assets represented the cost price of the goods purchased by the company, plus the expenditures made for labor in preparing them for sale. The reserve for depreciation represented the amount which the company considered reasonable as a reserve fund in view of the fact that the goods sold by the company consist almost exclusively of luxuries. Nothing is more fickle than fashion and the taste in luxuries. The design or style of many of the most costly articles may suddenly become obsolete and necessitate the employment of considerable labor and expense in making such articles conform to the fashion or popular taste for the time being.

This reserve for depreciation is therefore a reasonable deduction from the assets of the company; but for the purpose of ascertaining the value of the stock, the reserve maintained against possible loss by theft, smoke, etc., should not be deducted, as this is a reserve for contingencies that may never happen, and no evidence was submitted to the appraiser to show that the company had ever lost any of the amount reserved for contingencies. The appraiser therefore was correct in refusing to deduct this special reserve of \$2,300,000 from the assets of the company."

4. Stocks.

a. ACTIVE SECURITIES.

When the securities are actively dealt in on the market the average price for a reasonable period prior to death is the best measure of value.

Matter of Crary, 31 Misc. 72; 64 Supp. 566.

And this is so even though the estate holds large blocks of stock which might depress the price if sold all at once.

In discussing this question the Illinois court says in *Walker v. People*, 192 Ill. 106 at page 110; 61 N. E. 489:

“ Fair market value has never been construed to mean the selling price of property at a forced or involuntary sale. The very fact that the market would be depressed by forcing such large blocks of stock to sale indicates that such a sale is not a proper test of the fair cash value of the stock * * *. The quotations of the stock exchange may be temporarily uncertain and untrustworthy, if the sales thereon are suddenly affected for speculative purposes or by the forcing upon the market and to sale of large blocks of stock in an extraordinary manner with no explanation of such action and when the purpose of it is left to the conjecture of those dealing in the stocks; but such quotations may be a fair and safe guide when they are taken for a reasonable period of sales made in the usual and ordinary course of business.”

Walker v. People, 192 Ill. 106, 110; 61 N. E. 489.

The same rule prevails in New York. The court said in *Matter of Gould*, 19 App. Div. 352; aff. as to this point 156 N. Y. 423; 51 N. E. 287:

“ It is claimed however that the rule should be construed that when the value of large blocks of stock is involved only the purchase and sale in markets of correspondingly large blocks of stock should be considered, upon the theory that such large blocks would necessarily sell at lower rates than small quantities of stock sold separately, and that throwing large blocks of stock upon the market all at once would have a tendency to produce a break in the market and perhaps an inability to get more than a mere nominal price offered for that stock. Under the construction contended for the securities involved in this proceeding might have been shown to be of little or no value.”

To the same effect is *People v. Coleman*, 107 N. Y. 541; 14 N. E. 431, where the court said:

“The market value of shares of capital stock may sometimes be above and sometimes below the actual value. Such value may be greatly advanced or depressed for speculative purposes without any change in the actual value; but the market value of any stock which is listed at the Stock Exchange in New York and largely dealt in from day to day for a series of months will usually furnish the best measure of value for all purposes. The competition of sellers and buyers, most of them careful and diligent to take account of every thing affecting the value of the stock in which they deal, and each mindful of his own interests and seeking for personal gain or advantage, will, almost universally, if time sufficient be taken, furnish the true measure of the actual value of the stock.”

See also

Matter of Chambers, 155 Supp. 153.

Matter of Kennedy, 155 Supp. 192.

b. INACTIVE SECURITIES.

A problem is often presented where the corporation has a large number of stockholders and extensive properties and yet its shares are seldom dealt in on the market. For example many railroads which are branch or connecting lines seldom appear in the quotations, yet it would be absurd for an appraiser to undertake a valuation of their properties for the valuation of a few shares unless the circumstance of incorporation in several states required it under the rule established in New York, Massachusetts and New Hampshire as to the Boston and Albany and Fitchburg roads. Stock in National banks is of a similar nature, held by many stockholders yet not an active or speculative security. Such corporations are not to be confused with the incorporated co-partnerships or “family

corporations ” whose securities are classed as “ closely held stock.” Their values have been established by time and publicity. Published financial statements, dividends, private sales and opinion evidence afford sufficient means for ascertaining their worth.

c. CLOSELY HELD STOCK.

Obviously the market price cannot determine its value — for often there is no market price. An entirely different method must be employed in ascertaining its value and in such a case the fact that the estate holds large blocks of the stock and whether it could be sold are elements to be considered.

Matter of Chappell, 151 App. Div. 774; 136 Supp. 271.

and the selling price of a few shares of such stock is of little value in determining the actual worth.

Matter of Curtice, 111 App. Div. 230; 97 Supp. 444; aff. 185 N. Y. 543; 77 N. E. 1184.

Where there had been but two sales in six months held error to take the average price.

Matter of Malcolmson, N. Y. L. J., June 20, 1912.

But where there were four sales though not on the exchange of 100 share lots shortly prior to death the evidence was held to establish a market price and in such a case it was error to take evidence of book value.

Matter of Eugene Pitou, N. Y. L. J., Feb. 14, 1914.

It was error to value the stock at the price bid on the date of death, the average price fixes the market value.

Matter of J. S. Kennedy, N. Y. L. J., Mar. 8, 1911.

And of course it must be the price bid and not the price asked in the absence of actual sales.

Matter of Clark, 163 Supp. 972.

Evidence of sales two years prior to death is too remote.

Matter of Valentine, 147 Supp. 231.

In the absence of sufficient evidence of market price the intrinsic value from the assets and debts must be ascertained.

Matter of Achelis, N. Y. L. J., March 9, 1912.

The entire subject of the valuation of such stock and the kind of evidence by which it may be determined was recently illustrated in the valuation of stock in the Pabst Brewery which was owned almost exclusively by its founder and his family. In *Pabst v. State*, 139 Wis. 561 the court says, at page 593:

“ The court’s finding as to the value of the stock in the brewing company is excepted to as erroneous. The court found the value of the brewing company’s stock on June 1, 1904, the date of the decedent’s death, to be \$1,150 per share. The appraiser’s appointed by the County court reported the same value in January 1905. The County court, upon the trial, valued it at \$1,408.45 per share. The face value is \$1,000 per share. The law requires that the tax shall be assessed upon the clear market value of the property. It appears that there had been no general sales of this stock in the market. On various occasions, when he secured stock for the corporation or when there were dealings between members of the family, the decedent had dealt with this stock on the basis of its book value. The transfers shown were apparently made in reliance on the book value. The evidence adduced showed the dividends declared and paid for the years 1896–1904 inclusive, and the value of the corporation’s assets from 1896 to 1904 inclusive, exclusive of the good will of the business. In the deed of gift decedent declared the book of 2,840 shares of stock to be \$4,000,000. These items of evidence were offered as the best proof attainable to show the value of

the stock. They were evidences of value though they were not direct and general tests of market value. Many and various reasons are assigned why the evidence adduced on stock value fails to sustain the court's findings as to the value of the stock. These contentions are based on the claims that dividends have been small, that the brewing plant has no convenient shipping facilities, that the stock transfers and value of the corporation's assets as shown on the books are not reliable criteria because they represent no more than the decedent's estimate of his business and because there are no proper and necessary deductions for depreciation, losses, decrease in business and other causes incident to the conduct and operation of so large and extensive an enterprise and its holdings. Special probative force is claimed for the opinion evidence of values adduced by appellants as tending to show that the stock is worth less than its face value. After giving full effect to these considerations, we cannot say that the court erred by over-estimating the actual value of the stock. The facts and circumstances regarding the business of the corporation and its properties, the progress, growth, and general financial results, furnish a basis for valuation. These evidences of the value of the stock are sufficient to sustain the conclusion of the trial court, and the findings of fact on this branch of the case must stand."

State v. Pabst, 139 Wis. 561, 593; 121 N. W. 351.

The cases in New York when similar questions have arisen follow similar lines.

The price at which such stock was appraised in another state or even in another proceeding is not competent evidence.

Matter of Willmer, 75 Misc. 62; 134 Supp. 686; aff. 153 App. Div. 804; 138 Supp. 649.

Dividends actually paid are to be considered but are not controlling.

Matter of Smith, 71 App. Div. 602; 76 Supp. 185.

Earning power is a factor.

Matter of Brandreth, 28 Misc. 468; aff. 169 N. Y. 437; 62 N. E. 563.

The rule to determine the value of closely held stock is the same as with co-partnerships.

Matter of McMullen, 92 Misc. 637; 157 Supp. 655.

Proof of profits or losses after death not competent.

Matter of Demarest, 157 Supp. 653.

When the business must be sold executor's commissions should be deducted in determining the value.

Matter of Weatherbee, 157 Supp. 652.

The market value of merchandise on hand and bills receivable should be considered.

Matter of Hyman, N. Y. L. J., May 22, 1914.

Book value may be a basis for the valuation. Appraiser sustained and surrogate reversed where it was followed.

Matter of Valentine, 163 App. Div. 843; 147 Supp. 1146.

But book value may be a very uncertain criterion especially if the concern has over-valued its assets for purpose of securing credit or "insurance purposes" as some business men naively put it.

The learned surrogate who was reversed in the *Valentine* case soon had an opportunity to point this out. In *Matter of Pancost*, 89 Misc. 110; 152 Supp. 724, he says:

"This appeal by the executor of decedent's estate brings up for review the finding of the appraiser as to the value of the shares of stock in the Jersey City Galvanizing Company held by the decedent at the time of his death. It is conceded by the executor that the statement of assets and liabilities of the company which is attached to the appraiser's report is a correct transcript from the books of the company. If the valuations contained in this statement were correct, the book value of

the stock would be about \$186 a share. The president of the company testified, however, that the value of the assets as entered on the books of the company was not correct, that these values were 25 to 50 per cent. higher than the actual values, and that they were retained on the books for the purpose of assisting the company in obtaining credit.

“ When the corporation wishes to obtain credit, it refers to its books, which show net assets of \$149,022, or a value of \$186 a share. When the state attempts to assess a tax upon the interest of a stockholder in the company, the president of the company testifies that the actual value of the assets is about 50 per cent. of the book value, and that the value of the stock is only about \$50 a share. I regret to say that in law little credence can be given to the evidence of persons who make such admissions of deliberate misrepresentation. There may be extenuating facts not presented of record. It is difficult for the surrogate to reconcile the conflicting statements of value, and therefore it is practically impossible to arrive at a valuation that is more than approximately correct. The testimony in regard to alleged sales of stock is not conclusive, as such sales were not made in the open market, and the price at which the sales were made five years after the date of decedent's death cannot be taken into consideration in a proceeding to ascertain their value at the date of his death. I cannot, therefore, find from the evidence in this matter that the appraiser's valuation of \$125 a share is excessive. The order fixing tax will be affirmed.”

The uncertainties incident to appraisal on the basis of book value were again illustrated before the same Surrogate in *Matter of Bach*, 147 Supp. 229 where the appraiser had deducted 50 points from the book value in fixing the market value of the stock. The surrogate remitted the report with directions to reduce the book value by 20 points instead of 50.

On another occasion he thus states the difficulties of the situation: "From the decision of the Appellate Division I do not feel that there is any legal principle which would enable me to decide that the appraiser's valuation of the stock held by the decedent, although it varies considerably from the book value, is incorrect."

Matter of Frost, N. Y. L. J., May 1, 1914.

In *Matter of Roos*, 90 Misc. 521; 154 Supp. 939, the surrogate said:

"The corporation was a close one. The stock was not listed and no sales of it had ever occurred prior to the death of the decedent other than those when the corporation was originally formed. Where such a condition obtains it is difficult to fix the value of the stock, and it is often possible to get at it only by ascertaining the value of the property which it represents (*Matter of Jones*, 172 N. Y. 575; 65 N. E. 570), and even then it can be ascertained only with reasonable certainty (*Matter of Rees*, 208 N. Y. 590, affirming order of surrogate without opinion)."

The corporate books should be put in evidence.

Matter of Crawford, 85 Misc. 283; 147 Supp. 234.

Prices quoted on a local exchange are competent evidence though the stock is not listed or dealt in elsewhere.

Matter of Cook, 50 Misc. 487; 100 Supp. 628; aff. 187 N. Y. 253, 262; 79 N. E. 991.

But it must be the price *bid* not the price asked.

Matter of E. S. Clark, N. Y. L. J., Feb. 4, 1914.

Evidence of actual sales about the time of death may outweigh the report of a financial investigator.

Matter of Newman, 91 Misc. 200; 154 Supp. 1107.

Statements of earnings of the company after death are not competent evidence.

Matter of Blackwell, N. Y. L. J., Feb. 3, 1917.

The fact that the decedent was a minority stockholder will not justify a valuation of shares of minority stock at less than the value of the shares of stock in the hands of a majority owner.

Matter of Delafield, N. Y. L. J., Jan. 24, 1916.

5. Bonds.

Such securities are subject to the same classification as stock. Though less frequently dealt in their rate of interest and the value of the security give them easily ascertainable value when issued by public corporations or railroads. On the other hand when they are issued by a corporation substantially as preferred stock some examination of the corporate assets may be advisable. These questions present so few practical difficulties that the valuation of bonds has produced little or no litigation.

6. Pledged Securities.

a. AS TO THE PLEDGOR.

In the *Matter of Pullman*, 46 App. Div. 574; 62 Supp. 395, the court said: "These securities are liable to be resorted to by the creditors. In pledge the title to them is in the pledgee and they are not in a situation to be taxed now as property of the estate of Mr. Pullman. All of their amount may be required to pay the debts to which these bonds and stocks are collateral and the creditors' security should not be diminished at this time."

In *Matter of Havemeyer*, 32 Misc. 416; 66 Supp. 722, the surrogate took a similar view:

"The stock deposited by the decedent with his brokers as extra collateral for the loan of \$600,000 was not the property of the decedent, but formed a portion of an estate created by the decedent under a valid trust instrument, the terms of which were not revocable at his election, except with the consent of the beneficiaries of the trust."

To the same effect is,

Matter of Parsons, 51 Misc. 370; 101 Supp. 430; aff. 117 App. Div. 321; 102 Supp. 168.

But when the executor has redeemed the securities prior to the institution of the tax proceedings they are taxable; and, in any event, the better theory is that the equity of redemption is always taxable though taxation should be suspended until the value of the equity can be ascertained.

Matter of Hurcomb, 36 Misc. 755; 74 Supp. 475.

b. AS TO THE PLEDGEE.

The difficulties that will result from the theory that the title to the securities is in the pledgee become apparent when we consider the taxation of the obligation the property is pledged to secure; and the rule in the *Pullman* case was properly ignored by the surrogate in *Matter of Gugenheim*, New York Law Journal, July 29, 1916. In this case a note belonging to decedent was secured by collateral. The note was for \$261,119.60; and, at the date of death, the collateral was worth \$158,200. The note was not due until a year after the death of the testator. At its maturity the value of the collateral had diminished and it was then worth only \$62,000. This was all that was realized on the note, the maker being irresponsible. On the theory of the *Pullman* case the appraiser held that the value of the note was measured by the value of the collateral at the date of death and appraised it at \$158,200. On appeal to the surrogate it was held that the title to the collateral was not in the decedent and did not pass to his estate; that the loss in the value of the collateral was not a loss of the estate; and that the value of the note, at the death of the testator, was its value as finally determined by the amount received on the sale of the collateral, at the maturity of the note. The value as fixed by the appraiser was therefore reduced from \$158,200 to \$62,000.

7. Partnerships.

Generally the valuation of co-partnership property involves the same problems as to book value, earning power, depreciation of assets and value of good will that are involved in appraising closely held stocks.

The title vests in the surviving partner and all that the executor can claim is the equitable interest in the surplus after the payment of all debts.

Williams v. Whedon, 109 N. Y. 333; 16 N. E. 365.

A special partner is, in a sense, a creditor.

Matter of Clark, N. Y. L. J., Feb. 9, 1912.

An agreement between partners as to the value of the co-partnership interest and what a retiring partner shall have, whether the retirement be by death or otherwise, often has a material bearing upon the valuation.

Matter of Borden, 95 Misc. 443; 159 Supp. 346.

Matter of Vivianti, 138 App. Div. 281; 122 Supp. 954.

But an agreement that the surviving partner shall take all or a material portion of the assets, or may buy the decedent's share for a materially lower valuation than it is worth is an agreement to take effect at death and would seem to be taxable.

Matter of Cory, 164 Supp. 956; aff. 221 N. Y. mem.

Matter of Orvis, — App. —, 166 Supp. 126. See *ante*, p. 98.

Where the testator bequeathed to his partners his interest in the partnership assets on condition that they pay ninety per cent. of its appraised value to his executors in fifteen equal annual instalments, the probate court made a finding that the inheritance tax should be fixed from time to time as the money or property of the estate should come into the hands of the executors and not at the present value of future payments to be made by the partners.

Port Huron v. Wright, 150 Mich. 279; 114 N. W. 76.

A recent case before the New York County Surrogate's court illustrates some of the difficulties in the valuation of co-partnership assets from the examination of the firm books by an accountant. The court thus criticises the methods adopted:

"The decedent was a member of the firm of Milmine, Bodman & Company, which has been established in this city for more than thirty years. For the purpose of enabling the appraiser to ascertain the value of decedent's interest in the firm an affidavit was submitted by an accountant in which he states that the figures given by him in relation to the assets and liabilities of the firm are 'accurate statements from the books of the co-partnership.' He subsequently states that deduction ranging from 5 per cent. to 10 per cent. had been made by him as depreciation from the value of the assets. If the figures given by him are 'accurate statements from the books of the co-partnership,' then his conclusion as to the value of decedent's interest is incorrect, because he fails to make any deductions from the figures supposed to have been taken from the books of the firm. If he has made the deductions, then the figures given by him cannot be 'accurate statements from the books of the co-partnership.' In ascertaining the value of the merchandise on hand the accountant has taken the cost price of wheat, barley, oats and grain. This is incorrect, as it is the market price of the merchandise at the date of decedent's death which should be taken in ascertaining the value of decedent's interest in the firm. The accountant states that there is no good will, because the firm does not do business with the public. This statement seems to be inconsistent with accounts receivable of \$297,320 and accounts payable of \$191,247.93. There should be some explanation of these items. In ascertaining the value of the stock of the Rochester Cold Storage and Ice Company the accountant has deducted 5 per cent. from the cost price of the

real estate owned by the company. This is incorrect, as the real estate should be appraised at its market value upon the date of decedent's death. The value of the merchandise owned by the Bodman-McConaughy Company is given at \$295,909.29, but it is not stated whether that amount represented the market value of the merchandise at the date of decedent's death. To justify the appraiser in appraising at \$68,151.58 the value of the note given by the Elk Creek Ranch Company to the decedent for \$81,594.71 there should be a verified statement of the assets and liabilities of the company as of the date of decedent's death. The appraiser's report will be remitted to him for further testimony in regard to the matters above referred to."

Matter of Bodman, 100 Misc. 390.

As to Partnership real estate the rule seems well established that the interest of the deceased co-partner, being in the surplus after the payment of debts, is personalty.

McFarlane v. McFarlane, 82 Hun, 238; 31 Supp. 272.

Fairchild v. Fairchild, 64 N. Y. 471.

Van Brocklen v. Smeallie, 140 N. Y. 70.

Matter of Straus, N. Y. L. J., Oct. 9, 1911.

On the other hand it has been held that, unless the partnership agreement expressly or impliedly refers to it, the co-partnership real estate retains its character as realty with all the incidents of that species of property between partners themselves and also between a surviving partner and the real and personal representatives of a deceased partner, except that each share is impressed with the payment of debts and obligations of the partnership.

Huber v. Case, 93 App. Div. 479; 87 Supp. 663.

Barney v. Pike, 94 App. Div. 199; 87 Supp. 1038.

Partnership ownership is not a legal joint tenancy.

Matter of Wormser, 51 App. Div. 441; 64 Supp. 897.

Money loaned to a firm by one of the co-partners is capital invested and not a mere co-partnership interest, subject to accounting. It is to be valued like any other asset on the death of the creditor.

Matter of Probst, 40 Misc. 431; 78 Supp. 983.

Where a partner in a firm invested the profits with the firm and transferred this account to his wife to protect his wife from his creditors, on the death of the wife a transfer tax should be assessed against the fund as her property.

Matter of Anthony, 40 Misc. 497; 82 Supp. 981.

A non-resident decedent sold his interest in a New York co-partnership shortly before his death and took as part payment notes of the firm indorsed by the continuing partners. These notes matured after death and were paid by the firm to the widow in her individual capacity who made affidavit that the deceased owned no property within the state, held not taxable as there was no proof the notes belonged to decedent at the date of his death.

Matter of Wallace, 149 Supp. 354.

Profits due but not withdrawn held a part of the partnership assets and to be taken into account in the valuation of the interest of the deceased.

Matter of DuBois, 163 Supp. 668.

Interest on capital invested by retired partners should not be included in estimating net profits.

Matter of Weatherbee, N. Y. L. J., Nov. 5, 1913.

8. Good Will.

a. A TAXABLE ASSET.

When Dr. Johnson was selling the Thrane brewery he made the famous statement that it was not the material assets that he was putting up at auction but "The potentiality of growing rich beyond the dreams of avarice,"

and though the Thrale brewery no longer has any good will it was obviously a valuable commodity a hundred years ago.

Good will consists of various elements:

1. The probability that old customers will resort to the old place.

2. Or if they do not “resort” that they will continue to be customers.

3. The advantage of continuing on established business at the “old stand.”

4. The advantage of continuing a familiar name or style.

5. Reputation and prior advertising.

6. Pattern, styles, trademarks.

Austen v. Boys, 27 L. J. Ch. 714.

People v. Roberts, 159 N. Y. 70; 53 N. E. 685.

Kramer v. Old, 119 N. C. 1, 25 S. E. 813.

Matter of Silkman, 121 App. Div. 202; 105 Supp. 872.

Where a business was carried on by an administratrix in the name of the decedent the good will was held to be an asset in her hands.

Matter of Mullon, 74 Hun, 358; 26 Supp. 683.

The succession to the good will of a decedent's business in which he had an interest is therefore a taxable transfer.

Matter of Jones, 28 Misc. 356; 59 Supp. 983; 69 aff. Div. 237; 74 Supp. 702; 172 N. Y. 575, 586; 65 N. E. 570.

Matter of Vivianti, 138 App. Div. 281; 122 Supp. 954; same case, 146 App. Div. 942; 131 Supp. 1148; aff. 206 N. Y. 656.

Matter of Keahon, 60 Misc. 508; 113 Supp. 926.

b. RULES FOR COMPUTATION.

Good will is elusive and in the nature of things cannot long endure as a thing apart from the enterprise and effort of the successors. While no hard and fast rules could be applied to the valuation of anything so ephemeral, several elements necessarily are to be considered.

The accepted method for computation is to take gross profits of the business for a number of years prior to death, usually at least three, and obtain an average, after deducting the reasonable value of the services of the deceased and 6% interest on the capital invested.

Matter of Ball, 161 App. Div. 79; 146 Supp. 499.

The valuation of the services of the deceased is often a vexatious problem as the only testimony obtainable is from those interested in the estate who are apt to exaggerate their importance. Much depends upon the nature of the business and how well it is established. The better established the business the less any one man's services are worth to it and proportionately the greater the value of the good will. The principle is justly founded but its application is often difficult.

In a recent case the New York surrogate fixed the value of the services of the decedent at one-half the net annual profits or \$11,500 although he only drew out \$5,000 a year as salary.

Matter of Crerand, N. Y. L. J., June 30, 1914.

The valuation of the capital and the profits must be ascertained from the balance sheets of the years prior to death; but the subsequent balance sheets may be competent for purposes of comparison.

Matter of Hirschberg, N. Y. L. J., Nov. 20, 1914.

c. NUMBER OF YEAR'S PURCHASE.

The annual value of the good will thus obtained must be multiplied by the number of years the evidence shows it may be expected to continue. In the absence of evidence to the contrary three years' purchase is customarily allowed.

Page v. Ratcliffe, 75 L. T. Rep. 371.

Matter of Silkman, 121 App. Div. 202; 105 Supp. 872.

But six and even ten years' purchase have been held not excessive when the evidence warrants it.

“ Our courts have not adopted the rigid rule, established by the English courts, of limiting the value of good will to one year's purchase of the net annual profits of the business calculated on an average of three years (*Mellersh v. Keen*, 28 Beav. 453) or that three years' net profits of a business arbitrarily represents the value of its good will (*Page v. Radcliffe*, 75 L. T. Rep. 371), but on the contrary incline to the more equitable rule that the value of good will may be fairly arrived at by multiplying the average net profits by a number of years, such number being suitable and proper, having reference to the nature and character of the particular business under consideration, and the determination of such proper number of years should be submitted to and determined by the jury as a question of fact, dependent upon the evidence before them in each action.”

Von Au v. Magenheimer, 115 App. Div. 84-87; 100 Supp. 659.

On the second appeal of the same case a verdict for six years' purchase was sustained in 126 App. Div. 257; 110 Supp. 629.

In *Matter of Moore*, 97 Misc. 238; 162 Supp. 213, the value of the good will of Tiffany & Co., was involved and the surrogate held that ten years' purchase was a fair multiple. He said:

“ The appraiser ascertained the value of the good will by deducting interest at the rate of 6% per annum on the capital employed by the company in its business from the average annual net profits and multiplying the difference by ten. This gave the value of the good will as \$1,507,-922.40. No exception was taken to the amount which the appraiser adopted as the annual average net profits; but it is contended that the value of the good will should be ascertained by multiplying the average net profit by three

or five instead of ten. The cases in this country are not uniform in regard to the number of years' purchase by which the average annual net profits may be multiplied for the purpose of determining the value of the good will. Most of the American cases adopt a period ranging from two to six years, the number being dependent upon the nature of the business, the length of time during which it has been established at a particular place and the extent to which it is known to the public."

The court then held that as Tiffany & Co. had been established for more than sixty years and had an excellent and wide reputation, ten years purchase used by the appraiser was not excessive.

In the *Matter of Rosenberg*, 114 Supp. 726, it was held that the business conducted by the decedent in premises rented by the month, owed much of its value to the confidence inspired in customers by the presence of the decedent, and fixed the value of the good will at \$800, or two years' purchase of the net profits, after allowing \$2,000 per year for the decedent's services.

The firm name of a partnership under which it has done business for many years does not belong to the surviving partner, but is a part of the *good will* of the firm, and subject to sale in the same way as other firm property.

Slater v. Slater, 175 N. Y. 143; 67 N. E. 224.

General public patronage is an element of the good will.

Boon v. Moss, 70 N. Y. 465.

In *Matter of Joseph Pulitzer*, N. Y. Law Journal, December 10, 1912, Surrogate Cohalen in remitting the report of the appraiser said: "Among the items of personal property are the following: Four thousand nine hundred and ninety shares of the Press Publishing Company, par \$100 per share, appraised at \$604.50 per share, \$3,016,455; 9164 shares of the Pulitzer Publishing Company, par \$100 per share, appraised at \$121.75, \$1,115,717.

“Among the affidavits submitted to the transfer tax appraiser in regard to the value of this stock appears one of Mr. N. H. Hotsford, auditor of the Press Publishing Company, publisher of the New York World, dated January 29, 1912, in which he states that the net profits of the Press Publishing Company for the year 1908 were \$333,673; for the year 1909 were \$662,391; for the year 1910 were \$702,374; for the year 1911 were \$552,883; total \$2,251,321. From this net total the appraiser deducted \$105,000 alleged to have been paid as bonuses to employees of the newspaper. The nature of these bonuses, whether gifts of contractual obligations, is not shown. Assuming these bonuses to have been voluntary contributions to the employees of the newspaper, in my opinion they have been erroneously deducted, and the net profits for the four years should be placed at \$2,251,321 instead of \$2,146,321. This would make the average net profits for the four years preceding decedent's death \$562,830.25 instead of \$536,580, as shown in the report of the transfer tax appraiser.

In *Matter of Ball*, 161 App. Div. 79; 146 Supp. 499, the court said:

“ This good will is property, and although intangible, the transfer thereof is taxable under the law relating to taxable transfers. (Tax Law [Consol. Laws, chap. 60; Laws of 1909 chap. 62], §§ 220, 243, as amended by Laws of 1910 chap. 706, and Laws of 1911, chap. 732; *Godley v. Crandall & Godley Co.*, 153 App. Div. 697, 713; 139 Supp. 236; *Matter of Dun*, 40 Misc. Rep. 509; 82 Supp. 802; *Matter of Hellman*, 174 N. Y. 254; 66 N. E. 809; *Matter of Vivanti*, 138 App. Div. 281; 122 Supp. 954; appeal dismissed, 204 N. Y. 413). The determination of the value of this intangible property is always difficult, and any rule adopted with respect to the same must of necessity be more or less arbitrary. In Allan on the Law of Goodwill (p. 85) the rule is thus stated: ‘ The usual basis of valuation

is the average net profits made during the *few* years preceding the sale.' In *Mellersh v. Keen* (28 Beav. 453) Sir John Romilly, Master of the Rolls, determined that 'the average of three years' annual profits' was a fair basis of value. In *Page v. Ratcliffe* (75 L. T. Rep. [N. S.] 371) Mr. Justice Stirling, of the High Court of Justice, said: 'It is assessed at so many years' purchase,' and in fixing the value of the good will of a brewery, he added: 'It seems to me that competition and a desire to exclude rivals in trade would lead a brewer to give not less than three years' profits.' In *Von Au v. Magenheimer*, 115 App. Div. 84; 100 Supp. 659, this court said, speaking through Mr. Justice Rich, that as a general rule 'the value of good will may be fairly arrived at by multiplying the average net profits by a number of years, such number being suitable and proper, having reference to the nature and character of the particular business under consideration,' and that the proper number of years is not a question of law, but one of fact. In the same case, on a second appeal, 126 App. Div. 257; 110 Supp. 629, it was held not to be error to refuse to charge that in estimating good will by the net profits the number of years cannot exceed five. In *Matter of Keahon*, 60 Misc. Rep. 508; 113 Supp. 926, the value of the good will was determined by multiplying the average net profits for a series of years by three. In *Matter of Silkman*, 121 App. Div. 202; 105 Supp. 872, the average net profits for the three years immediately preceding the testator's death was ascertained, and this sum, multiplied by two, was held, under the circumstances there disclosed, to be a fair basis of computation."

d. WHEN THE PROFITS ARE SPECULATIVE.

When the profits for the three years prior to death contain a purely speculative element the speculative profits must be excluded. This was illustrated in *Matter of Brush*, N. Y. Law Journal, Aug. 14, 1915, when the surrogate said:

“ The sum of \$265 a share was fixed as the value of the stock of the National Exhibition Company. The appellant contends that this stock should be valued at a higher figure. The principal items upon which said valuation appears to have been based was the lease of the playing ground used by said company and the earning power of the company. The appraiser, Mr. Day, has sworn that the lease is of no value except as used for its present purpose. I think his conclusion is correct. While the earning power of the company for the years 1910, 1911 and 1912 shows a large return upon the capital invested I find that this return is by no means certain by reason of the fact that it is made up largely of money paid by the public to see the post season games called the ‘ world’s championship series.’ The New York Base Ball Club, the popular name for the company, cannot, in the very nature of things, be a certain contender in this series every year,—no more than any one of the other seven clubs which, with it, make up the clubs of the national league circuit. Hence the financial returns as a result of being a participant in the world’s championship series, are so completely speculative that they must be entirely left out of consideration in analyzing the earning power of said company.”

But this rule does not apply merely because of the ordinary uncertainties and hazards of commercial enterprises. As the same surrogate said in *Matter of Daly*, N. Y. Law Journal July 28, 1916:

“ The uncertainties of the theatrical business referred to in the notice of appeal and which the appraiser, it is alleged, failed to take into account, are, in my opinion, no greater than those of any other business, and the appraiser was justified in disregarding them.”

e. WHEN NO PROFITS ARE SHOWN.

An important case on this question went to the Court of Appeals without eliciting an opinion all along the line.

The question involved was the valuation and taxation of the good will of the copartnership in which the decedent, Klauber, had an interest.

On the 26th day of April, 1907, Klauber, Horn & Company was dissolved by the retirement of Horn. It had a good will concededly valued at \$300,000.

On the following day the firm of Klauber Brothers & Company was organized. The decedent had substantially a half interest in both firms. The new firm had only been organized six months when Klauber died. It had made no profits simply because in its trade there is a buying season when it is all outgo and a selling season when it is all income and the first six months were in the buying season. The firm name was not retained; but Klauber Bros & Co. was *idem sonans*.

The new firm bought and the old firm sold to it:

“ The business; The embroidery stock; Goods in the warehouse; Stock in the lace department; Bills receivable; The furniture and fixtures; The lease of the premises where the business was done; All contracts with the traveling salesmen whose services were retained; Books of the old firm; The office supplies: All samples; The designs and cartoons; And the agreement further provided ‘ Only the said David Klauber and Samuel Klauber shall have the right to make these designs, and no direct or indirect copy of such design shall be made by the said Michael Horn, or by any of his agents.’ ”

There was no specific mention of “ good will ” *eo nomine*.

The Surrogate merely made a memorandum that the new firm did not buy the good will of the old firm and had made no profits itself; so there was no good will. On appeal the Comptroller's counsel protested that a good will of \$300,000 in value had thus been made to disappear over night. The Appellate courts affirmed without opinion.

Matter of Klauber, N. Y. L. J., May 17, 1913. Affirmed without opinion, 171 App. Div. 908; 218 N. Y. 607.

Austin Nichols & Co. was incorporated to take over the business of a partnership of the same name. Preferred stock was issued for all assets but good will, which the common stock represented, with the proviso that no dividends should be paid on the common stock unless 7 per cent. was paid on the preferred and a sinking fund of \$150,000 set aside from surplus profits. In the year and a half after incorporation these conditions had not been complied with and no dividends were paid on the common stock. Held that, as of the date of death of testator, the common stock had no value.

Matter of Ormiston, N. Y. L. J., Aug. 14, 1915.

From all of which it might appear that good will is an ephemeral commodity and that partnership agreements may easily be so drawn as to avoid its taxation.

These latter authorities, however, rather illustrate the "anfractuosities" of the judicial mind than well considered rules.

Macaulay's "Johnson" Essays, vol. III, p. 314.

In the *Matter of George A. Hearn*, decided by Surrogate Cohalan of New York County in July, 1917, the value of the dry goods firm of James A. Hearn & Son was valued at more than twice its tangible assets and five years' purchase was sustained. The valuation of the interest of decedent in the good will after death, under a copartnership agreement, was involved and is interesting and important. On this the opinion speaks for itself and is given in full as follows:

Estate of George A. Hearn.—The deceased died on the 1st of December, 1913. The executors of his estate contend that the transfer tax appraiser erred in appraising at \$1,520,014.67 the good will of the business conducted by the decedent and others under the name of James A. Hearn & Son, and they have appealed from the order entered upon the appraiser's report. The firm of James

A. Hearn & Son has conducted a drygoods business on West Fourteenth street in this city since 1879. In 1906 new articles of copartnership were entered into between George A. Hearn, the decedent, and three others. They provided that the partnership should continue until March 1, 1916. In the preamble to the partnership agreement it it stated that "the good will and assets of James A. Hearn & Son of every kind and description belong to and are vested in George A. Hearn individually." The articles of copartnership defined the interest of each of the partners in the firm, but provided that the death of either of the partners would not cause a dissolution of the firm. The articles further provided that in the event of the death of either of the partners, except George A. Hearn, before the expiration of the partnership by time limitation, the interest of the one so dying would be the amount standing opposite his name on the books of the firm at the last preceding trial balance, plus interest at the rate of five per cent. Upon the death of George A. Hearn it was provided that his interest or share in the business should continue until the termination of the partnership by time limitation. Upon such termination, his executors were authorized and empowered to purchase the interests of the other members of the firm at the amounts standing opposite their names on the books of the firm, as ascertained by the last preceding trial balance. It is apparent from the articles of copartnership that George A. Hearn never parted with the good will of the business of James A. Hearn & Son, and that the other partners never acquired any right to such good will. The value of their respective interests in the business was determined by the partnership agreement, and that instrument excluded the value of the good will when providing for the method of ascertaining the value of their interests. Therefore, George A. Hearn was, at the time of his death, the sole

owner of the good will of the business of James A. Hearn & Son. This good will was transferred and disposed of by his will. In appraising the value of the good will the appraiser found that the average annual net profits for the three years immediately preceding the date of decedent's death was \$366,710.18, and he multiplied this amount by $2\frac{3}{4}$ for the two years and nine months immediately prior to the date of decedent's death, the result being \$1,008,452.98. He also multiplied the average annual net profits by $2\frac{1}{4}$ for the time which elapsed between the death of the decedent and the termination of the partnership by time limitation, and took 62 per cent. of the result, making \$511,561.69. He then added this amount to the \$1,008,452.89 previously ascertained, and the sum of \$1,520,014.67 he found to be the value of the good will. The appraiser explains that he took 62 per cent. of the net earnings after the date of decedent's death, instead of the whole amount, because the decedent's interest in the assets of the firm was 62 per cent. The value of the good will constituted an asset of the decedent's estate, and its value, like that of any other asset, must be ascertained as of the date of his death. The decedent at the date of his death was the owner of the entire good will, and not 62 per cent. of it; and it was the value of the entire good will that was transferred by his will. There was therefore no legal justification for the appraiser in calculating the good will on the basis of 62 per cent. from the date of decedent's death. The profits earned or losses sustained after the date of decedent's death cannot be taken into consideration in ascertaining the value of the good will (*Matter of Silkman*, 121 App. Div., 203); it must be based upon the net profits for the years preceding the date of decedent's death. The appraiser multiplied the average annual net profits for the three years immediately preceding the date of decedent's death by five. In view of the length of time during which the business has been established, its reputation, its

extensive advertising and its prominence in the drygoods trade, I think five years' average of the annual net profits is a reasonable value of the good will of the business (*Von Au v. Magenheimer*, 126 App. Div., 257); but in order to ascertain the average net annual profits which is to be multiplied by five, a period of at least six years immediately prior to the date of decedent's death should be taken into consideration. The average annual profits thus ascertained, multiplied by five, would represent the value of the good will of the business of James A. Hearn & Son at the date of the decedent's death, if his executors could sell it on that day. The articles of copartnership, however, provided that decedent's interest in the firm could not be sold at the date of decedent's death, but should continue until the termination of the partnership on March 1, 1916. Therefore the value of the good will at the date of decedent's death would be the sum which, if invested at five per cent. on that day, would equal on March 1, 1916, the amount obtained by multiplying the average annual net profits by five. The appeal of the executors is confined to the value of the good will, no question being raised as to its distribution under the terms of the will of the decedent. It is therefore unnecessary to inquire whether the persons who were partners of the copartnership which expired on March 1, 1916, and who were entitled to receive a certain number of shares of stock in the corporation directed to be formed by the will of the decedent, are beneficiaries of a part of the good will and their interests taxable accordingly. The order fixing tax will be reversed and the appraiser's report remitted to him for correction as indicated.

C.—DEDUCTIONS

In order to ascertain the value of the interest transferred which is subject to the tax we must not only consider the assets but also the liabilities, consisting of the

debts of the estate and the expenditures which must be deducted in order to ascertain the net value of the estate passing to the heir, devisee or distributee. Dower, curtesy, family allowance, homestead, community interest, have all been considered because they are not deductions from the estate of the decedent but never in fact, became a part of that estate.

1. Mortgages.

As to mortgages we have seen that they are to be deducted from the value of the realty on the theory that it is the equity of redemption and not the gross value that is subject to the tax.

Matter of Sutton, 3 App. Div. 208; 38 Supp. 277; aff. 149 N. Y. 618.

Matter of Offerman, 25 App. Div. 94; 48 Supp. 993.

Matter of Murphy, 32 App. Div. 627; 53 Supp. 1110; aff. 157 N. Y. 679.

A direction by testator to pay certain mortgages out of personalty does not authorize the appraiser to deduct the amount from the value of the personal estate.

Matter of Berry, 23 Misc. 230; 51 Supp. 1132.

Matter of DeGraff, 24 Misc. 147; 53 Supp. 591.

Matter of Livingston, 1 App. Div. 368; 37 Supp. 463.

Matter of Maresi, 74 App. Div. 76; 77 Supp. 76.

Under chapter 41, New York Laws 1903, mortgages are deducted from appraised value of the real estate.

A devisee of land which is subject to a mortgage takes it *cum onere*, and the equity therein is only liable to taxation.

Matter of Kene, 8 Misc. 102; 29 Supp. 1078.

In the case of a blanket mortgage covering several pieces of realty where testator has made an apportionment on sale of one of the parcels it is binding on the executor and hence on the appraiser.

Matter of Tremberger, N. Y. L. J., Oct. 31, 1913.

2. Debts.

Debts of the decedent are, of course, to be deducted from his assets in order to ascertain the net value of his estate, but what of the personal liability of the obligation on a mortgage bond?

a. LIABILITY ON MORTGAGE BOND.

This was recently illustrated in the *Matter of Prentiss*, N. Y. Law Journal, Dec. 2, 1916. Here a decedent had deeded the real estate to his wife subject to a mortgage which she did not assume. After holding his liability on the bond a debt of the testator's the surrogate said: "But on the other hand the matter of its payment must be viewed as differing from the payment of an ordinary debt, for the reason that in all likelihood it will fall upon the real estate under the terms of the mortgage. In view of this I think that the proper disposition of the appeal is to suspend giving to said bond the status of a debt until its value is irrevocably fixed by the final disposition of the mortgage."

Under similar circumstances the Surrogate was sustained when he refused to allow the obligation on the bond as a deduction.

Matter of Calman, 100 App. Div. 517; 91 Supp. 1095.

See also

Matter of Skinner, 45 Misc. 559; 92 Supp. 972; aff. as to this point, 106 App. Div. 217; 94 Supp. 144.

b. REPAIRS TO REAL ESTATE.

The cost of repairs to real estate, like mortgages, is a charge on the land and is not to be deducted from the personal assets when the repairs were contracted for during the lifetime of the decedent though not completed until after his death.

Matter of Baudouine, 5 App. Div. 622; 39 Supp. 1121.

Matter of Kemp, 7 App. Div. 609; 40 Supp. 1144; aff. 151 N. Y. 619; 45 N. E. 1132.

Surrogate Fowler of New York County took an opposite view in *Matter of Amsinck*, New York Law Journal, Feb. 21, 1913, but possibly the decision of the Court of Appeals in the *Kemp* case was not called to his attention. The value of the betterments should, at all events be taken into consideration in valuing the real estate.

c. DEBTS PAID BY WILL.

When a debt is forgiven by will the transfer is taxable.

Matter of Bartlett, 4 Misc. 380; 25 Supp. 990.

Matter of Wood, 40 Misc. 155; 81 Supp. 511.

Matter of Hirsch, 83 Misc. 681; 145 Supp. 305.

Matter of Michaelis, N. Y. L. J., Aug. 11, 1915.

Matter of Tuigg, 15 Supp. 548.

If not outlawed, they must be appraised at their fair market value and not their face value.

Morgan v. Warner, 45 App. Div. 424; 60 Supp. 963; aff. 162 N. Y. 612; 57 N. E. 1118.

If the debt is valueless, that is, if the beneficiary is financially irresponsible no tax is imposed, the mental relief of a bankrupt in having one score out of many canceled not being regarded as a taxable commodity.

Morgan v. Warner, 45 App. Div. 424; 60 Supp. 963; aff. 162 N. Y. 612; 57 N. E. 1118.

And where not forgiven they must be deducted from the distributive shares.

Matter of Smith, 14 Misc. 169; 35 Supp. 701.

“It is against conscience that the legatee should receive anything out of the fund without deducting therefrom the amount of that fund which is already in his hands, as a debtor to the estate.”

Smith v. Kearney, 2 Bart. Ch. 533.

Cited and followed in

Leask v. Hoagland, 64 N. Y. 159.

And such debts will not be construed as advancements rather than loans on the testimony of interested parties as against written evidence of the obligation.

Matter of Dormitzer, N. Y. L. J., Feb. 6, 1913.

Matter of Bennington, 67 Misc. 363; 124 Supp. 829.

Bruce v. Griscom, 9 Hun, 280; aff. 70 N. Y. 612.

Erbeling v. Erbeling, 61 Misc. 537; 115 Supp. 894.

A more serious question arises when services have been rendered to the decedent and are paid for by will. The payment of the debt by will is taxable. Shall the legatee who accepts the payment still be permitted to prove the value of the services and have them allowed as a deduction? A New York Surrogate has so held, though the decision is of doubtful authority.

Matter of Enos, 61 Misc. 594; 115 Supp. 863.

In this case, where a niece had rendered services to testatrix and the latter, after the usual clause relative to the payment of debts and funeral expenses, devised all her property to said niece; held, that the value of niece's services was a proper deduction.

The contrary was held in Kansas.

State v. Mollier, 96 Kan. 514; 152 Pac. 771.

And in New York, where a testatrix left a sum of money to her daughter-in-law pursuant to an agreement thus to compensate her for supporting her husband (the son of the testatrix), and where, after the death of the testatrix, the daughter-in-law presents a claim against her estate based upon the agreement, and the claim after having been rejected by the executor is established and paid, the

claimant is not entitled also to the legacy under decedent's will intended by her to carry out her agreement.

Matter of Embury, 19 App. Div. 214; 45 Supp. 881; aff. 154 N. Y. 746; 49 N. E. 1096.

The creditor must accept the legacy. So where the will directed the executors to pay a debt, but the creditor proves his claim as a debt and the executor pays it as such, it is a proper deduction from the decedent's estate, and the amount thereof is not liable to a transfer tax (citing *Matter of Gould*, 156 N. Y. 423; 51 N. E. 287), and the direction in the will was a sufficient acknowledgment to remove the bar of the statute of limitations.

Matter of Levy, N. Y. L. J., May 15, 1907; aff. 122 App. Div. 919; 107 Supp. 1134.

d. DOUBTFUL CLAIMS.

A debt not collectible because the statute of limitations has intervened; or where the statute of frauds may be interposed as a defense, should not be deducted; and, generally, claims should not be allowed as deductions unless they can be proved against the estate and payment enforced if resisted.

Matter of Wormser, 36 Misc. 434; 73 Supp. 748.

If the claim against the estate is of doubtful validity the question of deduction should be postponed until the doubt is resolved.

Matter of Dimon, 82 App. Div. 107; 81 Supp. 428.

Matter of Rice, 56 App. Div. 253; 61 Supp. 911; 68 Supp. 1147.

3. Funeral and Burial Expenses.

These are allowed as deductions provided they are "reasonable."

Matter of Ludlow, 4 Misc. 594; 25 Supp. 989.

Matter of Millward, 6 Misc. 425; 27 Supp. 286.

Matter of Liss, 39 Misc. 123; 78 Supp. 969.

The cost of a monument is included.

Matter of Edgerton, 35 App. Div. 125; 54 Supp. 700; aff. 158 N. Y. 671; 52 N. E. 1124.

Matter of Black, 5 Supp. 452.

Also the cost of a cemetery lot.

Matter of Maverick, 135 App. Div. 44; 119 Supp. 914; aff. 198 N. Y. 618; 92 N. E. 1084.

Matter of Vinot, 7 Supp. 517.

As to what may be regarded as "reasonable" in such cases there is very little authority. Probably the "station of life" rule as to necessities is applicable. If a man can afford a silk dress for his wife why not a "wake" and a mausoleum?

When the expenditure is provided for in the will the rule seems to be that the testator is the best judge of what he can afford to spend on himself when he dies.

Out of an estate of about \$6,000 testator devised \$2,000 for a tombstone and burial expenses; held, that the fact that the testator designated that amount is a presumption of its reasonableness; and that, as the sum did not pass to any collateral heir, it was not taxable.

Morrow v. Durant, 140 Ia. 437; 118 N. W. 781.

4. Administration Expenses and Counsel Fees.

These are generally allowed as a deduction within the rule of "reasonableness."

Matter of Westurn, 152 N. Y. 93-102; 46 N. E. 315.

A counsel fee of \$5,000 where the personal estate amounted to only \$14,270 held unreasonable and disallowed.

Matter of Thomas J. Kennedy, N. Y. L. J., Aug. 11, 1915.

Counsel fees and expenses may be estimated in advance by the appraiser.

Matter of Gould, 19 App. Div. 352.

“ The expenses of administration are imposed as a matter of law and are caused by the use of the legal machinery provided by the state to wind up the affairs of deceased persons, and cannot ordinarily be avoided; hence it is just that they should be deducted from the valuation of the estate.”

State v. Probate Court, 112 Minn. 279; 128 N. W. 18.

Administration expenses should be paid out of the personal property of a nonresident within the state if it is sufficient to meet them and should not be deducted from the value of the real estate. This is important in the states that tax only the tangibles and real property of nonresidents.

Matter of Steele, 98 Misc. 180; 162 Supp. 718.

The tax itself is not an expense of administration.

Chesney's Estate, 1 Cal. App. 30; 81 Pac. 679.

5. Discount on Legacy.

Under most of the statutes a legacy cannot be paid until one year has elapsed — or longer — in order to give time for advertising for debts and collecting assets. It seems to be a necessary “ moratorium ” for the settlement and adjustment of the affairs of the decedent. But, as the legacy is presently taxable at its value at testator's death, many attorneys have been inclined to the view that the present worth of the legacy is its true value; in other words, that its taxable value should be its discount value.

The answer to this argument is that the statutes work out practical justice by charging no interest on the tax during the “ moratorium,” such at least is the effect of the only decisions on the question to which our attention has been called.

Matter of Hutter, N. Y. L. J., Dec. 3, 1914; aff. 167 App. Div. 930; 152 Supp. 1119.

Matter of Bird, 11 Supp. 891.

These authorities overrule the earlier cases in which such a discount was allowed.

Matter of Peck, 2 Con. 201; 9 Supp. 465.

Matter of Underhill, 2 Con. 262; 20 Sup. 134.

6. Expenses of Litigation.

a. WHEN TO CONSERVE THE ESTATE.

When the purpose of such litigation was to protect and conserve the estate such expenses are allowed as a deduction.

Matter of Gihon, 169 N. Y. 443; 62 N. E. 561.

So the expense of preparing for trial to meet objections filed to the probate of the will may be deducted.

Matter of Reed, 98 Misc. 102; 162 Supp. 412.

“ The successful defense of the attack upon the validity of the will was in the interest of the state, as the recipient of the tax on the bequest to the college; and we think that in ascertaining the amount upon which the tax should be computed the expenditures in defense of the will should have been deducted, so that the tax should not be computed upon it.”

Connell v. Crosby, 210 Ill. 380, 391; 71 N. E. 350.

b. DISPUTES AMONG THE BENEFICIARIES.

On the other hand litigation caused by disputes among the heirs or distributees as to the value of their interest is not a proper deduction.

Matter of Thrall, 157 N. Y. 46; 51 N. E. 411.

Matter of Sanford, 66 Misc. 395; 123 Supp. 284.

Re Lines' Estate, 155 Pa. St. 378; 26 A. 728.

“ The fact that the appellants were put to expense in asserting their rights and were embroiled in expensive litigation to obtain them was their misfortune. It did not diminish the value of the interests which devolved upon them on Westurn's death. It was a loss, but a loss to

their general estate. It did not prevent them receiving the whole interest transmitted to them. The fact that the court charged certain costs and allowances in their favor upon the estate did not change the situation. It was practically a charge upon their own property for the benefit of their attorneys.”

Matter of Westurn, 152 N. Y. 93; 46 N. E. 315.

So, money paid to secure the withdrawal of a will contest is not allowed as a deduction.

Matter of Marks, 40 Misc. 507; 82 Supp. 803.

Matter of Baldwin, N. Y. L. J., Aug. 21, 1912.

7. Taxes.

a. OTHER INHERITANCE TAXES.

The Federal government allowed the deduction of state inheritance taxes in ascertaining the net estate but many of the states did not return the compliment and Sept. 1, 1917 the Treasury Department reversed its ruling State taxes not being deducted hereafter. Under the Federal inheritance tax of 1898 the amount due the government was not allowed as a deduction in New York.

Matter of Gihon, 169 N. Y. 443; 62 N. E. 561.

Matter of Irish, 28 Misc. 647.

Matter of Ely, 149 Supp. 90.

Matter of Hoyt, 86 Misc. 696; 149 Supp. 91.

The Appellate Division, First Department, in *Matter of Bierstadt*, decided July 15, 1917, has held that these authorities apply if the tax is construed as a tax on the transfer, as was that of 1898, and that if it is construed as a tax on property it is unconstitutional and therefore not a deduction. For further discussion see U. S. statute, *post*, p. 484 et seq.

Massachusetts allowed the Federal tax of 1898 as a deduction and will probably follow the same rule as to the present tax, if it is held constitutional.

Hooper v. Shaw, 176 Mass. 190; 57 N. E. 361.

Inheritance taxes imposed by other states are not allowed as a deduction.

Matter of W. H. Penfold, 216 N. Y. 171; 110 N. E. 499.

But when the devisee dies and the interest is subject to two inheritance taxes, on two devolutions of the property, the first tax is allowed as a deduction.

Estate of Williams, 23 Cal. App. 285; 137 Pac. 1067.

b. GENERAL TAXES AND ASSESSMENTS.

These are allowed as a deduction if they have become a debt of the estate; so when they are so far complete that the name of the person assessed as the owner cannot be changed or altered by the assessment officers they are to be deducted.

Matter of Hoffman, 42 Misc. 90; 85 Supp. 1082.

Matter of Babcock, 115 N. Y. 450; 22 N. E. 263.

If they are assessed during the lifetime of the testator they have the status of debts.

Matter of Liss, 39 Misc. 123; 78 Supp. 969.

Taxes levied subsequent to testator's death, but assessed prior to his death, should be deducted if paid by the executors.

Matter of Brundage, 31 App. Div. 348; 52 Supp. 362.

Taxes due at death of decedent are payable out of his personal estate, and taxes accruing subsequently are chargeable to the land.

Seabury v. Bowen, 3 Bradf. 207.

Griswold v. Griswold, 4 Bradf. 216.

Smith v. Cornell, 111 N. Y. 554; 19 N. E. 271.

Under the Greater New York charter the assessment-roll is not completed until the amount chargeable against each parcel of land is computed and set down, when the lien attaches and it is a debt and therefore deductible.

Burr v. Palmer, 53 App. Div. 358; 65 Supp. 1056.

Accordingly held in the *Matter of Maresi*, 74 App. Div. 76; 77 Supp. 76, that where testator died January 30, 1901, taxes for the year 1900 are not deductible from his personal estate and the tax was not a lien at the time of death.

When the assessors had valued the property but the assessment roll had not been closed or the amount of the tax determined it was held that the tax was not a debt of the decedent and so no deduction was allowed.

Matter of Freund, 143 App. Div. 335; 128 Supp. 48; aff. 202 N. Y. 556; 95 N. E. 1129.

Taxes levied against the personal property of a non-resident must be paid out of that property and are not a deduction from the value of the real estate.

Matter of Steele, 98 Misc. 180; 162 Supp. 718.

Unless they are a personal liability of the decedent.

Matter of Lennox, N. Y. L. J., June 11, 1908.

8. Commissions.

a. To EXECUTORS.

Practically all the statutes provide that bequests to executors in lieu of commissions are taxable when in excess of reasonable compensation and all the authorities are agreed that the reasonable or statutory commissions of executors are to be allowed as a deduction.

Where each of three executors received a full commission under the N. Y. Code (Sec. 2730) three commissions were deducted.

Matter of Van Pelt, 63 Misc. 616, 118 Supp. 65.

Where securities of decedent pledged at the time of his death as security for payment of his indebtedness are sold by order of executors and the proceeds applied

to the payment of the debt the executors are entitled to commissions on the gross proceeds.

Matter of Williams, N. Y. L. J., Oct. 2, 1914.

Matter of Bolles, 67 Misc. 40; 164 Supp. 620.

Where securities are specifically bequeathed no commissions are allowed on their value.

Matter of Robinson, 37 Misc. 336; 75 Supp. 490.

Matter of Kings County Trust Co., 69 Misc. 531; 127 Supp. 879.

But if securities, although not specifically bequeathed, were accepted by the legatees in satisfaction of their legacies, the executors would be entitled to full commissions.

Matter of Curtiss, 9 App. Div. 285; 37 Supp. 626; 41 Supp. 1111.

Property held by decedent as trustee should not be included in the assets of the estate and carried as a debt, so as to increase the amount of the deduction for executor's commissions.

Matter of Russell, 148 Supp. 272.

If the executors renounce their commissions a nice question arises as to whether there is a gift. If they have accrued the executors may give away what is theirs if not the commissions revert to the estate and are taxable.

Matter of Van Rensselaer, N. Y. L. J., Oct. 11, 1912.

The decedent was a resident of New Jersey. The surrogate said:

“No proof of the law of New Jersey in regard to the particular time at which executors become entitled to commissions was adduced before the appraiser. In the absence of such proof it will be presumed that the law of New Jersey on this question is the same as our law (*Hynes v. McDermot*, 82 N. Y. 41; *Savage v. O'Neill*, 44 N. Y. 298). Our courts hold that an executor is not entitled to commissions until such commissions have been

ascertained by the court and a decree entered authorizing their payment (*Wheelwright v. Rhodes*, 28 Hun, 57; *Freedman v. Freedman*, 4 Redf. 211). If, therefore the executor of the decedent's estate renounced his right to commissions before a decree of the Orphan's Court of New Jersey was made determining the amount of such commissions and directing their payment, he renounced something to which he was not actually entitled and to which he never became entitled. The estate was not diminished by the amount of such commissions, because they were never deducted from the estate and had never become the lawful property of any individual. The property passed without any deduction for commissions to the legatee mentioned in decedent's will and upon the privilege of succeeding to the entire amount of the property so transferred a tax may be imposed.

"If, however, the renunciation was made after the entry of the decree in the Orphan's Court ascertaining such commissions and directing their payment, then, as such commissions would be the property of the executor, his renunciation of them would constitute a gift of the amount of such commissions from him to the legatee and they would not form a part of the taxable assets of the estate.

b. AS TO TRUSTEES.

Where the executors are also made trustees under the provisions of the will there is a difference of opinion.

In Minnesota it is held that when the executors also become trustees the commissions as such trustees are not a proper deduction. The court reasons thus:

"Trusts, however, of the character of that here before the court, are created for the benefit of those to whom the property ultimately passes, are of voluntary creation, and are intended for the preservation of the estate. No

sound reason is given to support the contention that such expenses should be taken into consideration in fixing the value of the estate for the purposes of this tax."

State v. Probate Court, 112 Minn. 279; 128 N. W. 18.

In New York, when the duties as executors are distinct and severable from the duties as trustees, two commissions are allowed; but if not distinct and severable only one commission.

Matter of Collard, 161 Supp. 455.

This distinction often involves nice questions in the construction of wills.

In *Matter of Ziegler*, 168 App. Div. 735, 743; 154 Supp. 652; aff. 218 N. Y. 544, the court said:

"They must show that they are required as executors: first, to conserve the entire estate that they may set aside the personal property in one fund for the purposes of an express trust established by the will; and the administration of that trust must be separate and severable in both act and time from the administration of the estate as executors; and finally they must show that they are directed in both of the above particulars, distinctly, definitely and expressly, or by fair intendment, by the will under which they assume to act."

But the commission may be postponed until the execution of the trust.

"The testator here established a trust fund in the administration of which no executorial duties are to be performed. The executors can pay this fund over to themselves as trustees and be discharged from any liability therefore as executors. They will therefore be entitled to receive commissions for receiving and paying out this sum as executors and for receiving the same as trustees. The trustees will not be entitled to commissions for paying out this money until the termination of the life estate.

This commission is not a proper charge in diminution of the value of the life estate.”

Matter of Vanneck, 175 App. Div. 363; 161 Supp. 893.

Matter of Cadwalader, 96 Misc. 404; 160 Supp. 523.

When the amount of the trust estate cannot be determined until the executorial duties have been performed commissions are allowed.

Matter of Blun, 176 App. Div. 189; 160 Supp. 731.

In *Matter of James P. Tuttle*, N. Y. Law Journal, June 9, 1914, Surrogate Cohalen held: “The executors appeal from the order fixing tax and allege that the appraiser erred in refusing to deduct trustees’ commissions from the assets of the estate. The testator directed his executors to pay his debts, to deliver the specific legacies and to satisfy the general legacies. He then directed that his residuary estate be held in trust during the life of his wife. It is obvious that the duties of the executors and trustees are entirely distinct. The trustees therefore are entitled to commissions upon the residuary estate (*Laytin v. Davidson*, 95 N. Y. 263; *Olcott v. Baldwin*, 190 N. Y. 99; 82 N. E. 748).”

c. ON SALE OF REAL ESTATE.

When there is a mere power of sale of real estate given by the will and no direction to sell or necessity for sale no commissions on the real estate are allowed to the executor.

Matter of Crain, 98 Misc. 496; 164 Supp. 751.

When the will gave power to sell real estate but the power has not been exercised at the date of the tax proceedings commissions on the real estate are not allowed as a deduction.

Matter of Steele, 98 Misc. 180; 162 Supp. 718.

Brokers commissions are also allowed as a deduction when the sale of the real estate is necessary to the due administration of the estate.

Matter of Saunders, 77 Misc. 54, 68; 137 Supp. 438; aff. 156 App. Div. 891.

9. Family Allowance.

Sec. 2670 of the New York Surrogate's Act (Former Section 2713), reads as follows:

If a person having a family die, leaving a widow or husband, or minor child or children, the following articles shall not be deemed assets, but must be included and stated in the inventory of the estate as property set off to such widow, husband or minor child or children:

1. All housekeeping utensils, musical instruments, sewing machine and household furniture used in and about the house and premises, fuel and provisions, and the clothing of the deceased, in all not exceeding in value five hundred dollars.

2. The family bible, family pictures and school-books used by or in such family, and books not exceeding in value fifty dollars, which were kept and used as part of the family library.

3. Domestic animals with their necessary food for sixty days, not exceeding in value one hundred and fifty dollars.

4. Money or other personal property not exceeding in value one hundred and fifty dollars.

Such property so set apart shall be the property of the surviving husband or wife, or of the minor child or children if there be no surviving husband or wife. No allowance shall be made in money or other property under subdivisions one, two and three if the articles mentioned therein do not exist.

Former section 2713 amended and renumbered, L. 1914, chap. 443.

Most of the states have similar statutes.

The above exemptions are allowed as deductions in transfer tax proceedings.

Matter of Libolt, 102 App. Div. 29; 92 Supp. 175.

But the allowance is in kind only, the money value cannot be estimated and deducted.

Matter of Baird, 126 App. Div. 439; 110 Supp. 708.

Matter of Stiles, 64 Misc. 658; 120 Supp. 714.

Matter of Williams, 31 App. Div. 617; 52 Supp. 710.

Matter of Keough, 42 Misc. 387; 86 Supp. 807.

Baucus v. Stover, 24 Hun, 109.

10. Pro Rating Debts.

More serious problems arise in taxing the transfer of property of non-residents within the state. The estate might be bankrupt and yet there might be no local creditors and all the assets might be within the state. The general rule is to apportion or pro rate the assets and total debts;

Matter of Baylies, 148 Supp. 912,

as well as the funeral expenses, commissions and other deductions:

Matter of Porter, 67 Misc. 19; 124 Supp. 676; aff. 148 App. Div. 896.

The commissions of a foreign executor are estimated at the rate paid in New York unless there is proof of a different allowance in the state of domicile.

Matter of Kennedy, 20 Misc. 531; 46 Supp. 906.

Matter of La Farge, 149 Supp. 535.

“ Under the decision in the *Matter of Porter* (67 Misc 19; 124 Supp. 676; aff. 148 App. Div. 896) the appraiser should have deducted from the New York assets the debts due to residents of this State and then deducted the foreign debts and administration expenses in the proportion which the New York assets bore to the entire assets of the estate.”

Matter of Yerkes, N. Y. L. J., Dec. 5, 1912.

a. WHEN THE LOCAL DEBTS EXCEED THE LOCAL ASSETS.

In *Matter of King*, 71 App. Div. 581; 76 Supp. 220; aff. 172 N. Y. 616; 64 N. E. 1122, the non-resident decedent's interest was in a firm which manufactured in New York and had a branch selling office in Illinois, hence its assets were mainly in Illinois, and its debts in New York and the New York debts exceeded the local assets.

The court said:

“However desirous we may be to give a liberal construction in order to uphold a levy under the Transfer Tax Act (Laws of 1896, chap. 908, art. 10, as amd.), we think there is an insuperable objection to sustaining the tax fixed in this proceeding. Ordinarily on the death of a member of a firm the legal title to the assets of the firm vests in the surviving members, and what is left to the representatives of the deceased partner is the right to an accounting. (*Williams v. Whedon*, 109 N. Y. 333; 16 N. E. 365.) Assuming, however, but not deciding, that the decedent had a property interest in the assets of the firm in this State which is subject to taxation, we find it impossible to get away from the conclusion that as against such property the right exists to deduct the debts due to creditors in this State. In the present instance, upon the conceded facts, this would leave no balance subject to taxation. A tax on personal property of a non-resident is one which the State imposes based upon its dominion over the property situated within its territory, and as such property is liable to be appropriated for the payment of debts therein, we fail to see upon what principle the latter can be entirely disregarded. Here it is conceded that the liabilities of the firm in this State exhaust its assets in this State.”

b. WHEN THERE ARE LOCAL ASSETS AND NO LOCAL DEBTS.

Conversely the same rule was applied when the assets were in California and the debts in New York.

“ In determining the value fixing the amount of the inheritance tax payable in this state of property having its situs therein which passes in kind to the residuary legatees under the will of a non-resident testator who left no creditors in this state and whose estate in his state of domicile is ample to pay all debts and expenses of administration, no deduction should be made from the actual value of the property of any portion of the debts proved or expenses incurred in the state of the testator's domicile.”

McDongald v. Low, 164 Cal. 107; 127 Pac. 1027.

c. WHEN LOCAL DEBTS ARE PAID WITH FOREIGN ASSETS.

In Tennessee it is held that to secure a deduction of debts of a non-resident due local creditors it must be shown that they were paid from local assets. So, when a resident of Mississippi owned property in Tennessee, and owed debts there, and the debts were paid out of Mississippi assets, no deduction was allowed.

Memphis Trust Co. v. Speed, 114 Tenn. 677, 691; 88 S. W. 321.

In New York however a deduction is allowed, notwithstanding the fact that the local debts were paid with foreign assets. The court reasons thus:

“ The principle applicable to this taxation is different from that applicable to the taxation of personal property of residents of this state, for here the tax is not against the individual or against the particular property, but is a tax upon the transfer of that property, and it is only by reason of the transfer of the specific personal property in this state from the testator to his legatees that the state undertakes to tax, and when nothing actually passes by virtue of that transfer no tax is imposed. The Code having made this property within the state applicable to the payment of the debts of the decedent to resident creditors the fact that to release them the executor

brought money of the decedent from out of the state and paid the debts so that the securities in this state could be transmitted to be administered at the residence of the decedent cannot make any difference as to what actually was transferred upon which a tax was imposed.

“ If the securities had been sold and the proceeds used to pay the debts to resident creditors there could be no question. The executors have procured the money, paid the debts, and released these securities from the liability for his indebtedness, in substance purchased the securities for the estate. This result is within *Matter of King* (71 App. Div. 581, 76 Supp. 220; aff. on opinion below, 172 N. Y. 616, 64 N. E. 1122), and *Matter of Westurn* (152 Id. 93, 46 N. E. 315). There it was held that what was transferred and what was, therefore, taxable was the amount of the property of the testator less his debts.”

Matter of Grosvenor, 124 App. Div. 331; 108 Supp. 926; 126 App. Div. 953; 111 Supp. 1121; aff. 193 N. Y. 652; 86 N. E. 1124.

d. WHEN THERE ARE BOTH LOCAL AND FOREIGN DEBTS AND ASSETS.

“ The deduction to be made for debts owing to non-resident creditors, mortuary expenses, commissions on property without the state, and other administration expenses in respect to such property, should be in the proportion which the net New York estate (after all deductions are made for debts owing to resident creditors, New York commissions, and New York administration expenses) bears to the entire gross estate wherever situated.”

Matter of Porter, 67 Misc. 19; 124 Supp. 676; aff. 148 App. Div. 896; 132 Supp. 1143.

Matter of Browne, 127 App. Div. 941; 111 Supp. 1111; aff. 195 N. Y. 522; 88 N. E. 1115.

So, where the appraiser merely deducted from the New York assets the expenses of administration and commissions allowed by the laws of New York it was held that,

he should also have deducted the proportion of the debts due to non-residents and the administration expenses incurred in the state of decedent's domicile which the net New York assets bear to the entire assets of the estate wherever situated.

Matter of Kirtland, 94 Misc. 58; 157 Supp. 378.

When a deceased non-resident's total estate was \$489,393.27 and his tangible assets in New York were valued at \$50,040.30 and he owed the Vichy Company, a French Corporation, \$129,617.24 on a contract payable in New York, the executors contended no tax was due; but the surrogate held the debts should be pro-rated against the entire assets. That is, as about 1-11 of the assets were taxable in New York they should be charged with about 1-11 of the debt.

Matter of Raimbouville, N. Y. L. J., July 27, 1916.

e. AS TO PARTNERSHIPS.

When partnership debts are paid out of partnership assets no deduction allowed from individual estate.

Memphis Trust Co. v. Speed, 114 Tenn. 677; 88 S. W. 321.

The whole subject was exhaustively considered by the New York County Surrogate in the *Matter of Clark*, N. Y. Law Journal Feb. 9, 1912. The decedent's firm had its main office in Boston, with branch offices in New York and Chicago. The deceased was owner of 7/10 of the firm assets. The New York assets amounted to \$94,306.88, there were New York debts of \$26,174.65 and then there was a special partner, residing in New York, who had \$100,000 invested in the firm. In dealing with the problem thus presented the court said:

“ It is true that the legal title to the partnership property in this state vested upon the death of the decedent in the surviving partners for the purpose of liquidation

and that the right of the legal representatives of the deceased partner in the assets was an equitable right to the decedent's share of what was left after payment of the partnership debts. (*Reinhardt v. Reinhardt*, 134 App. Div. 440; 119 Supp. 285. *Joseph v. Herzog*, 198 N. Y. 456, 92 N. E. 103); but it is alleged in the affidavit submitted by the executors that the net value of the partnership assets in this state was the sum of \$94,306.88 and that the legal representatives of the decedent were entitled to seven-tenths of this amount, subject to any claims of partnership creditors in other states which remained unsatisfied after the application of the partnership property in those states to the payment of the partnership indebtedness. When the value of this interest was actually ascertained and definitely determined its transfer became taxable in the same manner and to the same extent as if the property had belonged to the decedent individually at the time of his death (*Matter of Clinch*, 180 N. Y. 300, 73 N. E. 35). For the purpose of ascertaining the value of this interest debts due by the partnership to New York creditors must first be deducted from the firm assets located here (*Matter of King*, 71 App. Div. 581, 76 Supp. 220 aff'd 172 N. Y. 616, 64 N. E. 1122). There does not, however, seem to be any authority for holding that the general indebtedness of a partnership to creditors in different states should all be deducted from the New York assets; it would seem to be more equitable and reasonable to deduct from the net assets in New York that proportion of the general indebtedness of the partnership to foreign creditors which the New York assets bear to the entire assets of the partnership (*Matter of Porter*, 67 Misc. 19; 124 Supp. 676; aff. 148 App. Div. 896, 132 Supp. 1143).

“ The executors also contend that the contribution of the special partner constitutes an indebtedness of the firm to a New York creditor, and that the amount should be

deducted in full from the New York assets. A special partner in a limited partnership is not entitled to payment of his contribution until the claims of all the partnership creditors are satisfied (§ 37, Partnership Law), and if payment is made to him after dissolution of the firm, but before all the creditors are paid, the amount so paid to him may be reached by a creditor of the partnership who has exhausted his remedies against the partnership assets (*Fuhrmann v. Von Pustau*, 126 App. Div. 629; 111 Supp. 34). The interest of a special partner is not strictly a debt at all (*Harris v. Murray*, 28 N. Y. 547; *Hayes v. Meyer*, 35 N. Y. 226). Up to the time of dissolution a special partner is not a creditor of the firm in any sense (*Matter of Price-McCormick Co.*, 69 App. Div. 37; 74 Supp. 624). It would therefore appear that the special partner is not a New York creditor within the meaning of the decision in the *Matter of King* (*supra*) directing that debts due to New York creditors should be deducted in full from New York assets for the purpose of ascertaining the value of decedent's interest in the copartnership."

11. Marshaling Assets to reduce Tax.

a. WHEN THE EXECUTOR CAN DO SO.

It was for a long time held in New York that a foreign executor might so marshal the assets of the estate that legacies to collaterals and strangers would be paid out of foreign assets and so escape the higher rate of tax, leaving the New York assets to pass to lineals and exempt corporations.

In *Matter of James*, 144 N. Y. 6; 38 N. E. 961. The court said:

"The property, which the testator died possessed of in Great Britain, is largely in excess of the amount given by him in legacies. Some portion of them has already been paid from the English estate and the executor has declared

his determination of appropriating that part of the testator's property to their payment; so that the American estate shall constitute the residuary estate, disposed of by the will in favor of the testator's brothers. This he may rightly do and thus save the estate from the payment of the succession tax imposed by our laws."

To the same effect is:

Matter of McEwan, 51 Misc. 455; 101 Supp. 733.

This has been followed in recent years in Tennessee and Illinois.

The Tennessee statute exempts a widow. The widow of a non-resident owning personal property within Tennessee elected to take that property as her half and the court held she could do so, citing *Matter of James*, 144 N. Y. 6; 38 N. E. 961.

Memphis Trust Co. v. Speed, 114 Tenn. 677; 88 S. W. 321.

So it is held in Illinois that an Illinois executor cannot be compelled from the residuary estate, or from his personal funds, to pay inheritance taxes assessed by the County court on bequests made to non-resident beneficiaries whose bequests have been paid by an ancillary executor out of proceeds of sales made by him under the will and approved by a court of a foreign state, of real estate in such state. The court said:

"It was the proper exercise of a sound discretion by those representing the benevolent, charitable and other similar institutions in Ohio to elect to take their legacies from proceeds of real estate in that state and so give the institutions they severally represented the benefit of the laws of that state exempting such legacies from the succession tax according to the laws of that state. It would be inequitable to require payment of the tax by the executor from his personal funds or from the residuary estate in view of our conclusion that the action of the Ohio bene-

ficiaries of Barber's will was lawfully taken and relieved the funds bequeathed to them from the operation of the inheritance tax of the laws of Illinois."

People v. Kellogg, 268 Ill. 489, 501; 109 N. T. 304.

b. WHEN HE CANNOT.

In New York the rule no longer obtains. It was first modified in *Matter of Ramsdill*, 190 N. Y. 492; 83 N. E. 584. Where a distinction was made in cases of intestacy. The court said:

"When a specific foreign legatee of a foreign testator can obtain satisfaction of his legacy in a foreign jurisdiction, the executor cannot be compelled to pay such a legacy out of the assets within our jurisdiction. This is the necessary result of the practical and obvious distinction between testacy and intestacy as applied to this subject of taxation. If a specific legatee needs not the intervention of our laws or courts to obtain what comes to him under a foreign will through foreign assets, in a foreign jurisdiction, our laws cannot coerce an executor into paying his legacy out of funds within our jurisdiction for the sole purpose of exacting a tax.

"But in a case of intestacy the rule is essentially different, because the distributee takes an undivided interest in the whole estate; and if part of it happens to be within our jurisdiction, he can only get his share of what is here under our laws and through our courts. This is the theory upon which the nephews and nieces of the intestate in the case at bar are clearly taxable under our statute."

By chapter 310 L. 1908. (subd. 3, § 220, of the present act), it was provided that all taxable non-resident property within the state not specifically bequeathed is deemed to be transferred proportionately; and foreign executors are no longer permitted to marshal the assets as to defeat or lessen the tax.

The same result has been attained in Massachusetts through judicial construction. The court thus reasons:

“ The remaining question is whether the executors, by using the stock in Massachusetts corporations for the payment of debts and legacies, to the exemption of the property in New Hampshire, could relieve it from liability to a tax upon succession imposed by our law. We are of opinion that they could not. It was decided in *Hooper v. Bradford*, 178 Mass. 95; 59 N. E. 678; that taxes under this statute are to be assessed on the value of the testator's property at the time of his death. The rights of all parties, including the rights of the Commonwealth to its tax, vest at the death of the testator. It is true that the interest of a legatee is subject to an accounting; but it is an interest in the existing fund, and it is analogous to that of a *cestui que trust*. The executors cannot, by independent action in attempting to marshal assets according to their personal wishes, enlarge or diminish the rights of legatees, or of the Commonwealth. The property in Massachusetts is subject to the jurisdiction of our courts, and the executors must use and appropriate it according to law. *Greves v. Shaw*, 173 Mass. 205; 53 N. E. 372, 209. *Callahan v. Woodbridge*, 171 Mass. 595; 51 N. E. 176. The debts, the legacies in Massachusetts exempt from taxation and the expenses of administration are chargeable upon the general assets, as well those in New Hampshire as those in Massachusetts, and only a proportional part of the property in Massachusetts should be used in paying them. The balance is subject to the payment of a tax under the statute. The decision of the Probate Court upon this part of the case was correct.”

Kingsbury v. Chapin, 196 Mass. 533; 82 N. E. 700.

PART V—PROCEDURE

A. Preliminaries.

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 - a. When Writ Allowed.
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PART V—PROCEDURE

A.—PRELIMINARIES

“ It is not enough for the legislature to declare that such interests are taxable. If no mode is provided for assessing and collecting the tax the law is imperfect and cannot, as to such interests, be executed. A tax cannot be legally imposed unless the statute, in addition to creating the tax, provided an officer or tribunal who shall appraise and assess the property on notice to the owner. *Stuart v. Palmer*, 74 N. Y. 188; *Remsen v. Wheeler*, 105 N. Y. 575. The principle decided in the cases cited applies to the transfer tax as well as to the assessments for public improvements. *Matter of McPherson*, 104 N. Y. 321.”

Matter of Stewart, 131 N. Y. 274; 30 N. E. 184.

So, when a non-resident decedent owned both real and personal property, the surrogate had jurisdiction under the New York Act of 1887; but unless he owned real estate no machinery was provided for collecting tax; and hence his estate escaped taxation. This was remedied by amendment; but even such a distinction, if intentional, was held constitutional.

Beers v. Glynn, 211 U. S. 477.

Matter of Lord, 111 App. Div. 152; 97 Supp. 553; aff. 186 N. Y. 459; 79 N. E. 1110.

Matter of Embury, 19 App. Div. 214; 45 Supp. 881; aff. 154 N. Y. 746; 49 N. E. 1096.

1. Motions to Exempt.

When the estate is too small to be taxed there are provisions in nearly all the statutes for a motion, upon affidavit setting forth the facts, for an exemption; or, if

the tax only amounts to a few dollars, for a motion to fix the tax without the formality of inventory or appraisal. The county treasurer or local comptroller's representative will always have blank forms for such applications. Notice of such an application must be given to the comptroller or tax commission.

Matter of Collins, 104 App. Div. 184; 93 Supp. 342.

A motion to exempt is not entertained where the taxing order has already been entered; it must then be accomplished by a motion to modify the decree.

Matter of Rothfeld, N. Y. L. J., Jan. 4, 1914.

Following is the form of a motion used before the Surrogate of New York county.

SURROGATE'S COURT — NEW YORK COUNTY.

In the Matter of the Estate of
..... *Deceased.*

PLEASE TAKE NOTICE, that on the petition of
....., dated and verified the day of
....., and the affidavit of
....., verified the day of, and
on all other papers and proceedings herein, I will move
this Court, at Chambers thereof, to be held in the Hall of
Records, in the Borough of Manhattan, City of New York,
County of New York, on the day of
at 10:30 o'clock in the forenoon of that day, or as soon
thereafter as counsel can be heard, for an order exempting
the estate of, deceased,
from the tax imposed by the article of the Tax Law
relating the Taxable Transfers of Property.

Dated New York,

TO LAFAYETTE B. GLEASON,
*Attorney for the State Comptroller,
 233 Broadway, Borough of Manhattan,
 City of New York.*

SURROGATE'S COURT — COUNTY OF NEW YORK.

In the Matter of the Estate of
 Deceased.

TO THE SURROGATE'S COURT OF THE COUNTY OF NEW YORK.

The petition of respectfully
 shows:

FIRST.— That he is one of the Executors of the last will and testament of, deceased; that said decedent died a resident of the State of New York on the day of, leaving a last will and testament, copy of which is hereby annexed, which was duly admitted to probate by the Surrogates' Court of the County of New York, on the day of, and that Letters Testamentary were duly issued by the said Surrogates' Court of the County of New York, on the day of to your petitioner, whose post office address is, Borough of Manhattan, City of New York, and to, whose post office address is

SECOND.— That no order has been made herein appointing an appraiser.

THIRD.— That as such Executor, deponent is personally familiar with the affairs of said estate the property constituting the assets thereof and their fair market value and with the debts, expenses and charges properly and legally liable as deductions therefrom; that decedent at the time of his death had no safe deposit box; that to the best of deponent's knowledge, information and belief, there is no person better informed than deponent upon the said affairs of this estate.

FOURTH.—That Schedule A, hereunto annexed, sets forth fully and in detail all the personal property wheresoever situated, owned by the decedent, or in which said decedent had any right, title or interest at the time of his death, or which, by reason thereof, fell into or became part of the assets of this estate by reversion, remainder or otherwise. That decedent owned no real estate at the time of his death, and decedent made no gift, grant or conveyance in contemplation of death, or to take effect at or after death, and decedent had no power of appointment vested in him by the will or deed or other instrument of another.

That decedent left no money at the time of his death, either in his immediate possession, standing to his credit, or in which he had any right, title or interest, in banks of deposit, savings banks, trust companies, or other institutions, except as set forth in said Schedule A. That decedent left no wearing apparel, jewelry, silverware, pictures, books, works of art, household furniture, horses, carriages, automobiles, boats, or any other personal chattels of any kind or nature, no bonds or mortgages or claims due and owing decedent at the time of his death, and no promissory notes or other instruments in writing for the payment of money, except as stated in said Schedule A.

That decedent was in the employ of and was not interested in any copartnership or business.

That decedent carried no life insurance policy or policies payable to himself or his estate, but was insured in the for the sum of, and also insured in the for the sum of and that both policies were payable to your petitioner, as beneficiary. That decedent owned no corporate stocks or bonds, or other investment securities, and no property of any kind or description except as set forth in said schedule A.

FIFTH.—That Schedule B hereto annexed sets forth the

funeral expenses, administration expenses and counsel fees paid or incurred in connection with the estate. That decedent left no debts or claims against the decedent. The Executors also claim to be allowed as a deduction herein their lawful commissions as Executors.

SIXTH.— That the only person beneficially interested in this estate at the time of decedent's death was and is your petitioner, a
..... of decedent, who resides at
and that ^{she}_{he} is of full age and sound mind.

SEVENTH.— That decedent left no property held by the decedent in trust for or jointly with another or others.

EIGHTH.— That petitioner has made due and diligent search for property of every kind and description left by the decedent, and has been able to discover only that set forth in Schedule A, and that no information of other property of the decedent has come to ^{her}_{his} knowledge, and that ^{she}_{he} verily believes that the decedent left no property except as therein set forth.

That all the sums claimed as deductions in Schedule B are lawful, just and fair.

WHEREFORE, your petitioner prays that an order be made exempting the estate of
from the tax imposed by the article of the Tax Law relating to Taxable Transfer of Property.

Dated,

.....

Petitioner.

2. In Case of Non-Residents.

If there are assets situated in another state, or the deceased owned stock in a corporation incorporated in another state, the attorney for the executor or administrator should write to the proper official in that state for blank forms and information.

a. OFFICIALS TO BE ADDRESSED BY NON-RESIDENT ATTORNEYS.

Following is a list of the official or department in the several states to whom inquiries should be addressed by non-resident attorneys for information as to the taxation of non-resident transfers, blank forms, etc.

Arkansas.—Gordon Huffmaster, Inheritance Tax Attorney, Little Rock, Arkansas.

Arizona.—D. F. Johnson, State Treasurer, Phoenix, Arizona.

California.—John S. Chambers, Comptroller, Attention Inheritance Tax Department, Sacramento, Cal.

Colorado.—Attorney-General, Denver, Colo.

Connecticut.—Hon. Wm. H. Corbin, Tax Commissioner, Hartford, Conn.

Delaware.—Register of Wills of New Castle County, Wilmington, Del.; Register of Wills of Kent County, Dover, Del.; Register of Wills of Sussex County, Georgetown, Del.

Georgia.—Hon. H. Clifford Walker, Attorney-General, State Capitol, Atlanta, Ga.

Idaho.—Probate Judge or County Treasurer where property is situated.

Illinois.—Hon. Edward J. Brundage, Attorney-General, Springfield, Ill.

Indiana.—Hon. Albert E. Humke, Inheritance Tax Investigator, State House, Indianapolis, Ind.

Iowa.—Hon. E. W. Hoyt, State Treasurer, Des Moines, Iowa.

Kansas.—State Tax Commission, Topeka, Kan.

Kentucky.—Hon. Robert L. Greene, Auditor, Frankfort, Ky.

Louisiana.—Edward H. Rightor, Esq., Hennen Bldg., New Orleans, for Parish of New Orleans. For other parishes, District Attorney of Parish.

Maine.—Attorney-General, Office, Augusta, Me.

Maryland.—Hon. Albert C. Ritchie, Attorney-General, Title Bldg., Baltimore, Md.

Massachusetts.—Hon. George S. Hatch, State Tax Commissioner, State House, Boston, Mass.

Michigan.—Hon. O. B. Fuller, Auditor General, Lansing, Mich.

Minnesota.—Hon. Egbert S. Oakley, Assistant Attorney-General, St. Paul, Minn.

Missouri.—Hon. Frank McAllister, Jefferson City, Mo.

Montana.—Hon. H. L. Hart, State Treasurer, Helena, Mont.

Nebraska.—Hon. Willis E. Reed, Attorney-General, Lincoln, Neb.

Nevada.—Hon. Geo. A. Cole, State Comptroller, Carson City, Nev.

New Hampshire.—Hon. Joseph S. Mathews, Assistant Attorney-General, Concord, New Hampshire.

New Jersey.—Comptroller of the Treasury, State House, Trenton, N. J.

New York.—Hon. Eugene M. Travis, State Comptroller, Capitol, Albany, N. Y.

North Carolina.—Corporation Commission, Raleigh, N. C.

North Dakota.—Tax Commission, Bismarek, N. Dak.

Ohio.—State Tax Commission, Columbus, Ohio.

Oklahoma.—Hon. E. B. Howard, State Auditor.

Oregon.—Hon. Thos. B. Kay, State Treasurer, Attention Inheritance Tax Department, Salem, Oregon.

Pennsylvania.—Hon. Chas. A. Snyder, Auditor Gen., Harrisburg, Pa.

Rhode Island.—Board of Tax Commissioners, State House, Providence, R. I.

South Dakota.—Hon. H. C. Preston, Tax Commission, Pierre, S. Dakota.

Tennessee.—Hon. John B. Thompson, Comptroller, Nashville, Tenn.

Texas.—Hon. H. B. Terrell, Comptroller, Austin, Texas.

Utah.—Hon. D. B. Shields, Attorney-General, Salt Lake City, Utah.

Vermont.—Hon. Chas. A. Plumley, Commissioner of Taxes, Northfield, Vt.

Virginia.—Hon. V. Lee Moore, Auditor Public Accounts, Richmond, Va.

Washington.—State Board of Tax Commissioners, Olympia, Wash.

West Virginia.—Hon. W. S. Hollanan, State Tax Commissioner, Charleston, W. Va.

Wisconsin.—Wisconsin Tax Commission, Madison, Wis.

Wyoming.—County Treasurer of County where property is situated.

United States.—Collector of Internal Revenue for your district. Names and addresses being as follows:

DISTRICTS AND COLLECTORS OF INTERNAL REVENUE

1. Alabama District, States of Alabama and Mississippi; John D. McNeel, collector, Birmingham, Ala.
2. Alaska. (See Washington.)
3. Arizona. (See New Mexico.)
4. Arkansas District; Jack Walker, collector, Little Rock, Ark.
5. First California District; John M. Platt, acting collector, San Francisco, Cal.—The counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, Eldorado, Fresno, Glenn, Humboldt, Inyo, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tulare, Tehama, Trinity, Tuolumne, Yolo, Yuba.

6. Sixth California District; John P. Carter, collector, Los Angeles, Cal.—The counties of Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura.
7. Colorado District, States of Wyoming and Colorado; Mark A. Skinner, collector, Denver, Col.
8. Connecticut District, States of Rhode Island and Connecticut; James J. Walsh, collector, Hartford, Conn.
9. Delaware. (See Maryland.)
10. Florida District; Henry Hayes Lewis, collector, Jacksonville, Fla.
11. Georgia District; Aaron O. Blalock, collector, Atlanta, Ga.
12. Hawaii District; John F. Haley, collector, Honolulu, Hawaii.
13. Idaho. (See Montana.)
14. First Illinois District; Julius F. Smietanka, collector, Chicago, Ill.—The counties of Boone, Carroll, Cook, Dekalb, Dupage, Grundy, Jo Daviess, Kane, Kankakee, Kendall, Lake Lasalle, Lee, McHenry, Ogle, Stephenson, Whiteside, Will, and Winnebago.
15. Fifth Illinois; District; Edward D. McCabe, collector, Peoria, Ill.—The counties of Bureau, Henderson, Henry, Knox, Marshall, Mercer, Peoria, Putnam, Rock Island, Stark, and Warren.
16. Eighth Illinois District; John L. Pickering, collector, Springfield, Ill.—The counties of Adams, Bond, Brown, Calhoun, Cass, Champaign, Christian, Coles, Cumberland, Dewitt, Douglas, Edgar, Ford, Fulton, Greene, Hancock, Iroquois, Jersey, Livingston, Logan, McDonough, McLean, Macon, Macoupin, Mason, Menard, Montgomery, Morgan, Moultrie, Piatt, Pike, Sangamon, Schuyler, Scott, Shelby, Tazewell, Vermilion, and Woodford.

17. Thirteenth Illinois District; John M. Rapp, collector, East St. Louis, Ill.—The counties of Alexander, Clark, Clay, Clinton, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Madison, Marion, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Wabash, Washington, Wayne, White, and Williamson.
18. Sixth Indiana District; Peter J. Kruyer, collector, Indianapolis, Ind.—The counties of Adams, Allen, Bartholomew, Benton, Blackford, Brown, Cass, Dearborn, Decatur, Dekalb, Delaware, Elkhart, Fayette, Franklin, Fulton, Grant, Hamilton Hancock, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jefferson, Jennings, Johnson, Kosciusko, Lagrange, Lake, Laporte, Lawrence, Madison, Marion, Marshall, Miami, Monroe, Morgan, Newton, Noble, Ohio, Porter, Pulaski, Randolph, Ripley, Rush, St. Joseph, Shelby, Starke, Steuben, Switzerland, Tipton, Union, Wabash, Wayne, Wells, White, and Whitley.
19. Seventh Indiana District; Isaac R. Strouse, collector, Terre Haute, Ind.—The counties of Boone, Carroll, Clark, Clay, Clinton, Crawford, Daviess, Dubois, Floyd, Fountain, Gibson, Greene, Harrison, Knox, Martin, Montgomery, Orange, Owen, Parke, Perry, Pike, Posey, Putnam, Scott, Spencer, Sullivan, Tippecanoe, Vanderburg, Vermilion, Vigo, Warren, Warrick, and Washington.
20. Third Iowa District; Louis Murphy, collector, Dubuque, Iowa.
21. Kansas District; Wm. H. L. Pepperell, collector, Wichita, Kans.
22. Second Kentucky District; Josh T. Griffith, collector, Owensboro, Ky.—The counties of Allen, Ballard, Barren, Breckenridge, Butler, Caldwell, Calloway,

- Carlisle, Christian, Clinton, Crittenden, Cumberland, Daviess, Edmonson, Fulton, Graves, Grayson, Hancock, Hart, Henderson, Hickman, Hopkins, Livingston, Logan, Lyon, McCracken, McLean, Marshall, Metcalfe, Monroe, Muhlenberg, Ohio, Russell, Simpson, Todd, Trigg, Union, Warren, and Webster.
23. Fifth Kentucky District; Thomas S. Mayes, collector, Louisville, Ky.—The city of Louisville and the counties of Adair, Bullitt, Casey, Green, Hardin, Henry, Jefferson, Larue, Marion, Meade, Nelson, Oldham, Owen, Shelby, Spencer, Taylor, and Washington.
24. Sixth Kentucky District; Charlton B. Thompson, collector, Covington, Ky.—The counties of Boone, Bracken, Campbell, Carroll, Gallatin, Grant, Harrison, Kenton, Pendleton, Robertson, and Trimble.
25. Seventh Kentucky District; Ben Marshall, collector, Lexington, Ky.—The counties of Bath, Bourbon, Boyd, Carter, Clark, Elliott, Fayette, Fleming, Franklin, Greenup, Johnson, Lawrence, Lewis, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Powell, Rowan, Scott, and Woodford.
26. Eighth Kentucky District; John W. Hughes, collector, Danville, Ky.—The counties of Anderson, Bell, Boyle, Breathitt, Clay, Estill, Floyd, Garnard, Harlan, Jackson, Jessamine, Knott, Laurel, Lee, Leslie, Letcher, Lincoln, Madison, Magoffin, Mercer, McCreary, Owsley, Perry, Pike, Pulaski, Rockcastle, Wayne, Whitley, and Wolfe.
27. Louisiana District; John Y. Fauntleroy, collector, New Orleans, La.
28. Maine. (See New Hampshire.)
29. Maryland District; States of Maryland and Delaware, the District of Columbia, and the counties of Accomac, and Northampton, of the State of Virginia; Joshua W. Miles, collector, Baltimore, Md.

30. Massachusetts District; John F. Malley, collector, Boston, Mass.
31. First Michigan District; James J. Brady, collector, Detroit, Mich.—Counties of Alcona, Alpena, Arenac, Bay, Branch, Calhoun, Cheboygan, Clare, Clinton, Crawford, Genesee, Gladwin, Gratiot, Hillsdale, Huron, Ingham, Iosco, Isabella, Jackson, Lapeer, Lenawee, Livingston, Macomb, Midland, Monroe, Montmorency, Oakland, Ogemaw, Oscoda, Otsego, Presque Isle, Roscommon, Saginaw, Sanilac, Shiawassee, St. Clair, Tuscola, Washtenaw, and Wayne.
32. Fourth Michigan District; Emanuel J. Doyle, collector, Grand Rapids, Mich.—Counties of Alger, Allegan, Antrim, Baraga, Barry, Benzie, Berrien, Cass, Charlevoix, Chippewa, Delta, Dickinson, Eaton, Emmet, Gogebic, Grand Traverse, Houghton, Ionia, Iron, Kalamazoo, Kalkaska, Kent, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Muskegon, Nawaygo, Oceana, Ontonagon, Osceola, Ottawa, St. Joseph, Schoolcraft, Van Buren, and Wexford.
33. Minnesota District; Edward J. Lynch, collector, St. Paul, Minn.
34. Mississippi. (See Alabama.)
35. First Missouri District; George H. Moore, collector, St. Louis, Mo.—The counties of Adair, Audrain, Bollinger, Boone, Butler, Callaway, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Howard, Iron, Jefferson, Knox, Lewis, Lincoln, Linn, Macon, Madison, Maries, Marion, Mississippi, Montgomery, Monroe, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Pulaski, Ralls, Randolph, Reynolds, Ripley, St. Charles, St. Francois, Ste. Genevieve, St. Louis,

Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Warren, Washington, and Wayne.

36. Sixth Missouri District; Edgar M. Harger, collector, Kansas City, Mo.—The counties of Andrew, Atchison, Barry, Barton, Bates, Benton, Buchanan, Caldwell, Camden, Carroll, Cass, Cedar, Chariton, Christian, Clay, Clinton, Cole, Cooper, Dade, Dallas, Daviess, Dekalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howell, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, Livingston, McDonald, Mercer, Miller, Moniteau, Morgan, Newton, Nodaway, Ozark, Pettis, Platte, Polk, Putnam, Ray, St. Clair, Saline, Stone, Sullivan, Taney, Texas, Vernon, Webster, Worth, and Wright.
37. Montana District; States of Idaho, Utah, and Montana; William C. Whaley, collector, Helena, Mont.
38. Nebraska District; George L. Loomis, collector, Omaha, Nebr.
39. Nevada. (See First California District.)
40. New Hampshire District, States of Maine, Vermont, and New Hampshire; Seth W. Jones, collector, Portland, Me.
41. First New Jersey District; Samuel Iredell, collector, Camden, N. J.—The counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, and Salem.
42. Fifth New Jersey District; Charles V. Duffy, collector, Newark, N. J.—The counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren.
43. New Mexico District, States of New Mexico and Arizona; Lewis T. Carpenter, collector, Phoenix, Ariz.
44. First New York District; Henry P. Keith, collector, Brooklyn, N. Y. —The counties of Kings, Nassau, Queens, Richmond, and Suffolk.

45. Second New York District; Wm. H. Edwards, collector, New York, N. Y.—All that part of the Borough of Manhattan south of a line running from the East River, northwest through Catharine Street, to the Bowery, north on the Bowery to Canal Street, west on Canal Street to Mott Street, north on Mott Street to Bleecker Street, east on Bleecker Street to the Bowery, northwest on the Bowery and Fourth Avenue to Fourteenth Street, west on Fourteenth Street to Sixth Avenue, north on Sixth Avenue to Twenty-fourth Street, and west on Twenty-fourth Street to the Hudson River.
46. Third New York District; Mark Eisner, collector, New York, N. Y.—All that part of the Borough of Manhattan north of the Second District and south of the Harlem River.
47. Fourteenth New York District; Roscoe Irwin, collector, Albany, N. Y.—The counties of Albany, Clinton, Columbia, Dutchess, Essex, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, Washington, and Westchester, and all that part of New York City north of the Third District.
48. Twenty-first New York District; Neal Brewster, collector, Syracuse, N. Y.—The counties of Broome, Cayuga, Chenango, Cortland, Delaware, Franklin, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Schuyler, Seneca, Tioga, Tompkins, and Wayne.
49. Twenty-eighth New York District; Vincent H. Riordan, collector, Buffalo, N. Y.—The counties of Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Steuben, Wyoming, and Yates.

50. Fourth North Carolina District; Josiah W. Bailey, collector, Raleigh, N. C.—The counties of Alamance, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Caswell, Chatham, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Durham, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hyde, Johnston, Jones, Lenoir, Martin, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Richmond, Robeson, Sampson, Scotland, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson.
51. Fifth North Carolina District; Alston D. Watts, collector, Statesville, N. C.—The counties of Alexander, Allegany, Anson, Ashe, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Cherokee, Clay, Cleveland, Davidson, Davie, Forsyth, Gaston, Graham, Guilford, Haywood, Henderson, Iredell, Jackson, Lincoln, McDowell, Macon, Madison, Mecklenburg, Mitchell, Polk, Randolph, Rockingham, Rowan, Rutherford, Stanly, Stokes, Surry, Swain, Transylvania, Union, Watauga, Wilkes, Yadkin, and Yancey.
52. North and South Dakota District; James Coffey, collector, Aberdeen, S. Dak.
53. First Ohio District; Andrew C. Gilligan, collector, Cincinnati, Ohio.—The counties of Brown, Butler, Clarke, Clermont, Clinton, Fayette, Greene, Hamilton, Highland, Miami, Montgomery, Preble, and Warren.
54. Tenth Ohio District; Frank B. Niles, collector, Toledo, Ohio.—The counties of Allen, Auglaize, Champaign, Crawford, Darke, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Logan, Lucas, Mercer,

- Ottawa, Paulding, Putnam, Sandusky, Seneca, Shelby, Van Wert, Williams, Wood, and Wyandot.
55. Eleventh Ohio District; Beriah E. Williamson, collector, Columbus, Ohio.—The counties of Adams, Athens, Coshocton, Delaware, Fairfield, Franklin, Gallia, Guernsey, Hocking, Jackson, Knox, Lawrence, Licking, Madison, Marion, Meigs, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Scioto, Union, Vinton, and Washington.
56. Eighteenth Ohio District; Harry H. Weiss, collector, Cleveland, Ohio.—The counties of Ashland, Ashtabula, Belmont, Carroll, Columbiana, Cuyahoga, Geauga, Harrison, Holmes, Jefferson, Lake, Lorain, Mahoning, Medina, Monroe, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, and Wayne.
57. Oklahoma District; Hubert L. Bolen, collector, Oklahoma City, Okla.
58. Oregon District; Milton A. Miller, collector, Portland, Oregon.
59. First Pennsylvania District; Ephraim Lederer, collector, Philadelphia, Pa.—The counties of Berks, Bucks, Chester, Delaware, Lehigh, Montgomery, Philadelphia, and Schuylkill.
60. Ninth Pennsylvania District; Benjamin F. Davis, collector, Lancaster, Pa.—The counties of Adams, Bedford, Blair, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lancaster, Lebanon, Mifflin, Perry, Snyder, York.
61. Twelfth Pennsylvania District; Fred C. Kirkendall, collector, Scranton, Pa.—The counties of Bradford, Carbon, Center, Clinton, Columbia, Lackawanna, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Pike, Potter, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming.

62. Twenty-third Pennsylvania District; C. Gregg Lewellyn, collector, Pittsburgh, Pa.—The counties of Allegheny, Armstrong, Beaver, Butler, Cambria, Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland.
63. Rhode Island. (See Connecticut.)
64. South Carolina; Duncan C. Heyward, collector, Columbia, S. C.
65. South Dakota. (See North and South Dakota.)
66. Tennessee District; Edward B. Craig, collector, Nashville, Tenn.
67. Third Texas District; Alexander S. Walker, Austin, Tex.
68. Utah. (See Montana.)
69. Vermont. (See New Hampshire.)
70. Second Virginia District; Richard C. L. Moncure, collector, Richmond, Va.—The counties of Amelia, Appomattox, Brunswick, Buckingham, Carolina, Charles City, Chesterfield, Cumberland, Dinwiddie, Elizabeth City, Essex, Fluvanna, Gloucester, Goochland, Greensville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Louisa, Lunenburg, Mathews, Middlesex, Nansemond, New Kent, Norfolk, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Princess Anne, Richmond, Stafford, Southampton, Spottsylvania, Surry, Sussex, Warwick, Westmoreland, and York.
71. Sixth Virginia District; John M. Hart, collector, Roanoke, Va.—The counties of Albemarle, Alexandria, Alleghany, Amherst, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Campbell, Carroll, Charlotte, Clarke, Craig, Culpeper, Dickenson,

- Fairfax, Fauquier, Floyd, Franklin, Frederick, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Loudoun, Madison, Mecklenburg, Montgomery, Nelson, Orange, Page, Patrick, Pittsylvania, Prince William, Pulaski, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe.
72. Washington District, State of Washington and Territory of Alaska; David J. Williams, collector, Tacoma, Wash.
73. West Virginia District; Samuel A. Hays, collector, Parkersburg, W. Va.
74. First Wisconsin District; Paul A. Hemmy, collector, Milwaukee, Wis.—Counties of Brown, Calumet, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Kenosha, Kewaunee, Manitowoc, Marinette, Marquette, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and county of Langlade with exception of the eight townships of said county which were formerly in Lincoln County.
75. Second Wisconsin District; Burt Williams, collector, Madison, Wis.—Counties of Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Columbia, Crawford, Dane, Douglas, Dunn, Eau Claire, Grant, Green, Iowa, Iron, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Lincoln, Marathon, Monroe, Oneida, Pepin, Pierce, Polk, Portage, Price, Richland, Rock, Rusk, St. Croix, Sauk, Sawyer, Taylor, Trempealeau, Vernon, Vilas, Washburn, Wood, and the eight townships in the western part of Langlade County which were formerly in Lincoln County.
76. Wyoming. (See Colorado.)

b. COMPANIES INCORPORATED IN STATES THAT TAX NONRESIDENT TRANSFERS.

Following is a list of the principal corporations and joint stock companies incorporated or formed under the laws of states that tax transfers of their stock in the estates of non-residents. Those marked * are incorporated in states that tax transfers to collaterals and strangers only.

Name of Company.	State where Corporation organized.
Adventure Consolidated Copper Co.....	Mich.
Algolah Mining Co.	Mich.
Allis-Chalmers Co.	N. J.
Allouez Mining Co.	Mich.
Amalgamated Copper Co.	N. J.
American Beet Sugar Co.....	N. J.
American Brake Shoe & Foundry Co.....	N. J.
American Can Co.	N. J.
American Car & Foundry Co.....	N. J.
American Cotton Oil Co. (The).....	N. J.
American Hide & Leather Co.....	N. J.
American Ice Securities Co.....	N. J.
American Light & Traction Co.....	N. J.
American Linseed Co.	N. J.
American Malt Corp.	N. J.
American Radiator Co.	N. J.
American Sewer Pipe Co.....	N. J.
American Shipbuilding Co.	N. J.
American Smelters Securities Co.....	N. J.
American Smelting & Refining Co.....	N. J.
American Snuff Co.	N. J.
American Steel Foundries Co.....	N. J.
American Sugar Refining Co. (The).....	N. J.
American Tobacco Co. (The).....	N. J.
American Type Founders Co.....	N. J.
American Woolen Co.	N. J.

Name of Company.	State where Corporation organized.
American Writing Paper Co.	N. J.
Anaconda Copper Mining Co.	Mont.
Ann Arbor Railroad Co.	Mich.
Arnold Mining Co.	Mich.
Associated Oil Co.	Cal.
Atlantic Coast Line Railroad Co.	Va.
Atlantic Mining Co.	Mich.
*Atchison, Topeka & Santa Fe Railway Co. (The) . .	Kan.
*Baltimore & Ohio Railroad Co. (The)	Va., Md.
Bethlehem Steel Corp.	N. J.
Bonanza Development Co.	Colo.
Butte-Ballaklava Copper Co.	Ariz.
Butte Coalition Mining Co.	N. J.
Calumet & Arizona Mining Co.	Ariz.
Calumet & Hecla Mining Co.	Mich.
Centennial Copper Mining Co.	Mich.
Central Coal & Coke Co.	Mo.
Central of Georgia Railway Co.	Ga.
Central Leather Co.	N. J.
Central Pacific Railway Co.	Utah
Central Railroad of New Jersey.	N. J.
Chesapeake & Ohio Railway Co. (The)	Va.
Chicago & Alton Railroad Co.	Ill.
Chicago & Eastern Illinois Railroad Co.	Ill.
Chicago & Northwestern Railway Co.	Ill., Wis., Mich.
Chicago, Burlington & Quincy Railroad Co.	Ill.
Chicago Great Western Railroad Co.	Ill.
Chicago Junction Railways & Union Stock Yards Co. (The)	N. J.
Chicago, Milwaukee & St. Paul Railway Co.	Wis.
Chicago Pneumatic Tool Co.	N. J.
Chicago Railways Co.	Ill.
Chicago, St. Paul, Minneapolis & Omaha Railway Co.	Wis.

NOTE.—Iowa, Kansas, Kentucky, Maryland, Ohio and Texas tax only inheritance of collaterals and strangers, see statutes of those States. Appendix.

Name of Company.	State where Corporation organized.
Chicago Subway Co.....	N. J.
Chicago Telephone Co.....	Ill.
*Cincinnati, Hamilton & Dayton Railway Co. (The) ..	Ohio
*Cleveland, Cincinnati, Chicago & St. Louis Railway.	Ohio
Colorado Fuel & Iron Co. (The).....	Colo.
Colorado & Southern Railway Co. (The).....	Colo.
*Columbus & Hocking Coal & Iron Co.....	Ohio
Commonwealth Edison Co.	Ill.
*Consolidated Coal Co. (The).....	Md.
Consolidated Mercur Gold Mines Co.....	N. J.
Crucible Steel Co. of America.....	N. J.
Cuban-American Sugar Co. (The).....	N. J.
*Cumberland Telegraph and Telephone Co.....	Ky.
Daly West Mining Co.....	Col.
Denver & Rio Grande Railroad Co.....	Col., Utah
Detroit United Railway Co.....	Mich.
Diamond Match Co. (The).....	Ill.
Distillers Securities Corp.....	N. J.
Duluth, South Shore & Atlantic Railway Co..	Mich., Wis.
Du Pont (E. I.) De Nemours Powder Co.....	N. J.
East Butte Copper Mining Co. (The).....	Ariz.
Eastman Kodak Co.	N. J.
Electric Storage Battery Co. (The).....	N. J.
Elgin National Watch Co.	Ill.
Franklin Mining Co.	Mich.
General Asphalt Co.	N. J.
General Motors Co.	N. J.
Goldfield Consolidated Mines Co. (The).....	Wyo.
Great Northern Iron Ore Properties.....	Minn.
Great Northern Railway Co.....	Minn.
Greene Cananea Copper Co.....	Minn.
Hancock Consolidated Mining Co.....	Mich.
Havana Electric Railway Co.	N. J.

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Name of Company.	State where Corporation organized.
Helvitia Copper Co. (The).....	Ariz.
*Hocking Valley R. R. Co.....	Ohio
Illinois Brick Co.....	Ill.
Illinois Central Railroad Co.....	Ill.
Indiana Mining Co.	Mich.
Ingersoll-Rand Co.	N. J.
*International and Great Northern R. R. Co.....	Texas
International Harvester Co.	N. J.
International Mercantile Marine Co.....	N. J.
International Nickel Co.	N. J.
International Power Co.....	N. J.
International Smelting & Refining Co.....	N. J.
International Steam Pump Co.....	N. J.
Iowa Central Railway Co.....	Ill.
Isle Royale Copper Co.....	N. J.
Kansas City Railway & Light Co.....	N. J.
*Kansas City, Fort Scott & Memphis Ry. Co.(The) ..	Kan.
*Kansas City, Mexico & Orient Railway Co. (The)...	Kan.
Kansas City Southern Railway Co. (The).....	Mo.
Keweenaw Copper Co.	Mich.
Laclede Gas Light Co. (The).....	Mo.
Lake Copper Co.	Mich.
Lake Erie & Western Railroad Co.....	Ill.
*Lake Shore & Mich. Southern Railway Co..	Ohio, Ill., Mich.
Lake Superior Corp. (The).....	N. J.
La Salle Copper Co.....	Mich.
*Louisville & Nashville R. R. Co.....	Ky.
Mayflower Mining Co.	Mich.
Metropolitan West Side Elevated Railway Co. (The) ..	Ill.
Michigan Central Railroad Co.	Mich.
Michigan Copper Mining Co.	Mich.
Michigan State Telephone Co.....	Mich.
*Minneapolis & St. Louis Railroad Co.....	Minn., Ia.

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Name of Company.	State where Corporation organized.
Minneapolis General Electric. (The).....	N. J.
Minneapolis, St. Paul & Sault Ste. Marie Railway Co.	Minn., Wis. & Mich.
*Missouri, Kansas & Texas Railway Co.....	Kan.
Missouri Pacific Railway Co. (The).....	Mo., Neb., Kan.
Mohawk Mining Co.	Mich.
Nashville, Chattanooga & St. Louis Railway Co.....	Tenn.
National Biscuit Co.....	N. J.
National Carbon Co.....	N. J.
National Enameling & Stamping Co.....	N. J.
National Lead Co.	N. J.
New Arcadian Copper Co.....	Mich.
New York Air Brake Co. (The).....	N. J.
Norfolk & Western Railway Co.....	Va.
North American Co. (The)	N. J.
North Butte Mining Co.....	Minn.
North Lake Mining Co.....	Mich.
Northern Central R. R. Co.....	Md.
Northern Pacific Railway Co.	Wis.
Northern Securities Co.....	N. J.
Ojibway Mining Co.	Mich.
Old Colony Copper Co.....	Mich.
Osceola Consolidated Mining Co.....	Mich.
Otis Elevator Co.....	N. J.
Pacific Coast Co. (The).....	N. J.
Pacific Telephone & Telegraph Co. (The).....	Cal.
Parrot Silver & Copper Co.....	Mont.
Pennsylvania Steel Co.	N. J.
People's Gas Light & Coke Co.....	Ill.
Peoria & Eastern Railway Co.....	Ill.
Pere Marquette Railroad Co.....	Mich.
Philadelphia Electric Co.	N. J.

NOTE.—Iowa, Kansas, Kentucky, Maryland, Ohio and Texas tax only inheritance of collaterals and strangers, see statutes of those States, Appendix.

Name of Company.	State where Corporation organized.
Pittsburgh, Cincinnati, Chicago & St. Louis Railway	Ohio, W. Va., Ill.
Pittsburgh Coal Co.	N. J.
Pittsburgh, Fort Wayne & Chicago Railway Co.	Ohio., Ill.
Pressed Steel Car Co.	N. J.
Pullman Co. (The)	Ill.
Quincy Mining Co.	Mich.
Railway Steel-Spring Co.	N. J.
Republic Iron & Steel Co.	N. J.
Rock Island Co. (The)	N. J.
St. Joseph & Grand Island Railway Co. (The) ..	Neb., Kan.
St. Louis & San Francisco Railroad Co.	Mo.
St. Louis Southwestern Railway Co.	Mo.
St. Mary's Mineral Land Co.	N. J.
San Pedro, Los Angeles & Salt Lake Railroad Co.	Utah
Santa Fe Gold & Copper Mining Co.	N. J.
Savannah Electric Co.	Ga.
Shattuck Arizona Copper Co.	Minn.
Sloss Sheffield Steel & Iron Co.	N. J.
Southern Pacific Co.	Ky.
Southern Railway Co.	Va.
Standard Oil Co.	N. J.
Superior & Boston Copper Co.	Ariz.
Superior & Pittsburgh Copper Co.	Minn.
Superior Copper Co.	Mich.
Swift & Co.	Ill.
Tamarack Mining Co.	Mich.
Tennessee Coal, Iron & Railroad Co.	Tenn.
Tennessee Copper Co.	N. J.
*Texas Co.	Texas
*Texas Pacific Land Trust.	Texas
*Toledo Railways & Light Co.	Ohio.
Twin City Rapid Transit Co.	N. J.

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Name of Company.	State where Corporation organized.
Union Bag and Paper Co.....	N. J.
Union Pacific Railroad Co.....	Utah
United Boxboard Co.	N. J.
United Fruit Co.	N. J.
United Railways Investment Co.	N. J.
United Shoe Machinery Corp.	N. J.
United States Cast Iron Pipe & Foundry Co.....	N. J.
United States Realty & Improvement Co.....	N. J.
United States Reduction & Refining Co.....	N. J.
United States Rubber Co.....	N. J.
United States Steel Corp.....	N. J.
Utah Consolidated Mining Co.....	N. J.
Utah Copper Co.	N. J.
Vandalia Railroad Co.	Ill.
Victoria Copper Mining Co.....	Mich.
Virginia-Carolina Chemical Co.....	N. J.
Virginia Iron, Coal & Coke Co.....	Va.
Virginia Railway Co.....	Va.
Wabash Pittsburgh Terminal Railway Co. (The)..	W. Va., Ohio.
Wabash Railroad Co.....	Ill., Mich., Mo., Ohio
Wells Fargo & Co.....	Col.
Western Electric Co.	Ill.
*Western Maryland R. R. Co.....	Md.
Western Telephone & Telegraph Co.....	N. J.
*Wheeling & Lake Erie Railroad Co.....	Ohio
Winona Copper Co.	Mich.
Wisconsin Central Railway Co.....	Wis.
Wolverine Copper Mining Co.....	Mich.
Wyandot Copper Co.	Mich.

NOTE.—Iowa, Kansas, Kentucky, Maryland, Ohio and Texas tax only inheritance of collaterals and strangers, see statutes of those States, Appendix.

c. COMPANIES INCORPORATED IN STATES THAT DO NOT TAX
NONRESIDENT TRANSFERS.

Following is a list of the principal corporations and joint stock companies incorporated or formed under the laws of states that do not tax nonresident transfers.

Name of Company.	State where Corporation organized.
Adams Express Co.....	N. Y.
American Agricultural Chemical Co. (The).....	Conn.
American Express Co.	N. Y.
American Locomotive Co.	N. Y.
American Pneumatic Service Co.....	Del.
American Telephone & Telegraph Co.....	N. Y.
*American Zinc, Lead & Smelting Co.....	Me.
Amoskeag Manufacturing Co.	N. H.
*Arizona Commercial Copper Co.....	Me.
Associated Merchants Co.	Conn.
*Atlantic, Gulf & West Indies Steamship Lines.....	Me.
Batopilas Mining Co. (The).....	N. Y.
Boston & Albany Railroad Co.....	Mass., N. Y.
*Boston & Corbin Copper & Silver Mining Co.....	Me.
Boston & Lowell Railroad Co.....	Mass.
Boston & Maine Railroad Co.....	Mass., N. H., Me.
Boston & Northern Street Railway Co.....	Mass.
Boston & Providence Railroad Corp.....	Mass.
Boston Elevated Railway Co.....	Mass.
Boston, Revere Beach & Lynn Railroad Co.....	Mass.
Brill (J. G.) Co. (The).....	Pa.
Brooklyn Rapid Transit Co.....	N. Y.
Brooklyn Union Gas. Co. (The).....	N. Y.
Buffalo, Rochester & Pittsburgh Railway Co....	N. Y., Pa.
Butterick Co. (The).....	N. Y.
Cambria Steel Co.	Pa.
Capital Traction Co. (The).....	Dist. of Columbia

* If decedent died after April 7, 1917, transfers of stock in Maine corporations are taxable under statute of that date.

Name of Company.	State where Corporation organized.
Central & South American Telegraph Co.....	N. Y.
Central Vermont Railway Co.....	Vt.
Concord & Montreal Railroad Co. (B. & M.).....	N. H.
(B. & M.).....	Vt.
Connecticut River Railroad Co. (B. & M.)....	Mass., N. H.
Consolidated Gas Co.	N. Y.
Cramp & Sons Ship & Engine Building Co. (The Wm.) .	Pa.
Crex Carpet Co.	Del.
Delaware & Hudson Co. (The).....	N. Y.
Delaware, Lackawanna & Western Railroad Co. (The) .	Pa.
*Draper Co.	Me.
Duluth-Superior Traction Co. (The).....	Conn.
East Boston Co.....	Mass.
*Eastern Steamship Co.	Me.
Edison Electric Illuminating Co. (The).....	Mass.
Erie Railroad Co.	N. Y.
Federal Mining & Smelting Co.....	Del.
Fitchburg Railroad Co.	Mass., N. H., Vt. & N. Y.
*Galveston-Houston Electric Co.	Me.
General Chemical Co.....	N. Y.
General Electric Co.	N. Y.
Giroux Consolidated Mines Co.....	Del.
Independent Brewing Co.	Pa.
*Inspiration Copper Co.	Me.
Interborough-Metropolitan Co.	N. Y.
Interborough Rapid Transit Co.....	N. Y.
*International Buttonhole Machine Co.....	Me.
International Paper Co.	N. Y.
*Island Creek Coal Co.....	Me.
Kerr Lake Mining Co.	N. Y.
Lackawanna Steel Co.	N. Y.
Lehigh Coal & Navigation Co. (The).....	Pa.
Lehigh Valley Railroad Co.....	Pa.

* If decedent died after April 7, 1917, transfers of stock in Maine corporations are taxable under statute of that date.

Name of Company.	State where Corporation organized.
Long Island Railroad Co. (The).....	N. Y.
Mackay Companies (The)	Mass.
*Maine Central Railroad Co.	Me.
Manhattan Railway Co.....	N. Y.
Manufacturers Light & Heat Co. (The)	Pa.
Massachusetts Electric Companies	Mass.
Massachusetts Gas Companies	Mass.
Mergenthaler Linotype Co.	N. Y.
*Mexican Telephone & Telegraph Co.....	Me.
*Mexico Consolidated Mining & Smelting Co.....	Me.
Miami Copper Co.....	Del.
National Fire Proofing Co.....	Pa.
*Nevada Consolidated Copper Co.....	Me.
New England Cotton Yarn Co. (The).....	Mass.
New England Telephone & Telegraph Co.....	N. Y.
New York Central & Hudson River Railroad Co....	N. Y.
New York, Chicago & St. Louis Railroad Co. (The)	N. Y., Ohio, Ind., Pa.
New York Dock Co.....	N. Y.
New York, New Haven & Hartford Railroad Co.	Conn., Mass., R. I.
New York, Ontario & Western Railway Co.....	N. Y.
*Nipissing Mines Co.....	Me.
*Northern Texas Electric Co.....	Me.
Old Colony Railroad Co.....	Mass.
*Old Dominion Copper Mining & Smelting Co.....	Me.
Pacific Mail Steamship Co.....	N. Y.
Pennsylvania Railroad Co. (The).....	Pa.
Philadelphia Co.....	Pa.
Philadelphia Rapid Transit Co.....	Pa.
Pittsburgh Brewing Co.....	Pa.
Pittsburgh Plate Glass Co.....	Pa.
Quicksilver Mining Co.....	N. Y.

* If decedent died after April 7, 1917, transfers of stock in Maine corporations are taxable under statute of that date.

Name of Company.	State where Corporation organized.
*Ray Consolidated Copper Co.....	Me.
Reading Co.....	Pa.
Reece Button-Hole Machine Co.....	Me.
Reece Folding Machine Co.....	Me.
Rotary Ring Spinning Co.....	Del
Rutland Railroad Co.....	Vt., N. Y.
Sears, Roebuck & Co.....	N. Y.
Shannon Copper Co.....	Del.
*South Utah Mines & Smelters.....	Me.
Third Avenue Railroad Co. (The).....	N. Y.
Toledo, St. Louis & Western Railroad Co.....	Ind.
Tonopah Mining Co., Nevada (The).....	Del.
Torrington Co.	Me.
Union Traction Co. (Phila.).....	Pa.
United Cigar Manufacturers' Co.....	N. Y.
United Dry Goods Companies.....	Del.
United Gas Improvement Co. (The).....	Pa.
United States Express Co.....	N. Y.
*United States Smelting, Refining & Mining Co.....	Me.
*Utah-Apex Mining Co.....	Me.
West End Street Railway Co.....	Mass.
Western New York & Pennsylvania Railway Co.	Pa., N. Y.
Western Union Telegraph Co.....	N. Y.
Westinghouse Electric & Manufacturing Co.....	Pa.

3. The Safe Deposit Box.

a. COMPTROLLER MAY INSPECT.

The statutes of all the states where there are large cities require notice to the comptroller or tax commission by the executor or administrator before the securities of a decedent deposited with a safe deposit company can be delivered or a bank account transferred.

* If decedent died after April 7, 1917, transfers of stock in Maine corporations are taxable under statute of that date.

Safe deposit companies were inclined to contest the right of the state to step in between them and their customers and the test case in New York resulted in their favor.

People v. Mercantile Safe Deposit Co., 159 App. Div. 98; 143 Supp. 849.

In this case it was held that a safe deposit company, in renting boxes to its customers, is a landlord having no custody or control of the contents or physical possession thereof; and it, therefore, was not liable for a penalty in failing to disclose the contents of such a box belonging to a deceased customer to an agent of the comptroller.

This case was not taken to the Court of Appeals because a case in Illinois, where the same question was tested, went to the Supreme Court of the United States where an opposite result to the ruling in the New York case was reached.

National Safe Deposit Co. v. Stead, 250 Ill. 584; 95 N. E. 973; aff. 232 U. S. 58.

The United States Supreme Court reasoned thus:

“The contention that the company could not be arbitrarily charged with the duty of supervising the delivery and determining to whom the securities belonged is answered by the fact that in law and by contract it had such control as to make it liable for allowing unauthorized persons to take possession. Both by the nature of its business and the terms of its contract it had assumed the obligation cast upon those having possession of property claimed by different persons.

“Nor was there any deprivation of property nor arbitrary imposition of a liability in requiring the company to retain assets sufficient to pay the tax that might be due to the state. There are many instances in which by statute, the amount of the tax due by one is to be reported and paid by another,—as in the case of banks

required to pay the tax on the shares of a stockholder.

* * * The boxes were leased with the knowledge that the state had so legislated as not only to protect the interests of one dying after the rental, but also to secure the payment of the state tax out of whatever might be found in the box belonging to the deceased.”

Since this decision safe deposit companies throughout the Union have acquiesced with the demands of the state for a right to inspect the contents of the safe deposit boxes of decedents.

In a recent case in New York where a surviving joint tenant demanded access and the state comptroller ordered the box sealed and the personal representative of the deceased joint tenant were also opposed, the surviving joint tenant procured a mandatory injunction, but it was reversed leaving the applicant to his remedy at law.

Moller v. Lincoln S. D. Co., 174 App. Div. 458.

b. MAY NOT IMPOSE ARBITRARY CONDITIONS.

But the state comptroller cannot impose arbitrary conditions or burden the estate with any expense.

“ Upon receiving notice, it is the duty of the comptroller to have his representative attend and make a memo of the assets; and if the comptroller so desires he may have an appraisement, at his own expense, provided he does not delay the administrator in the performance of his statutory duties in acquiring control of the property and assets. He may not burden the estate with the expense of an appraisal and withhold his consent to delivery until this command has been complied with. The consent is not a matter of favor but a right which the administrator is entitled to and it may not be arbitrarily refused. An executor upon application to the surrogate is entitled to relief from such refusal.”

Matter of Rook, 98 Misc. 544.

In the matter of non-resident assets the transfer agent in New York of a New Jersey corporation refused to make the transfer without the Comptroller's consent. That consent was not given because the particular assets were not taxable. The delay caused a loss in the securities of \$14,000 and the executors sued the transfer agent. It was held that the transfer agent was not the agent of the executor and owed him no duty and was not liable.

Dunham v. City Trust Co., 115 App. Div. 584; 101 Supp. 87; aff. 193 N. Y. 642; 86 N. E. 1123.

c. CONSENT FOR TRANSFER OF FUNDS.

In New York: "It is the practice in reference to the estates of resident decedents for the Comptroller to give a written consent for the transfer of funds in bank, and stocks, bonds, or other securities as soon as the executor or administrator has qualified and application is made therefor by such representative or by the depositories named, and in case it is desired to transfer the contents of a safe-deposit box, the Comptroller will have a representative present to examine the contents of such box and will consent in writing to the transfer thereof to the proper representative. In case of non-resident decedents, where ancillary letters have not been issued by a surrogate of this State, the consent of the Comptroller for the delivery or transfer of the securities, etc., is withheld until the question of the taxability of the property within the State is determined, and if taxable, the tax paid, after which the written consent to transfer each security or deposit will be given.

"In several of the largest counties it has been the practice for the Comptroller to give the resident attorney a power of attorney to issue waivers and consents for the transfer of funds of a resident decedent in the banks and trust companies of such county respectively, and

also to attend and represent the Comptroller at the opening of safe-deposit boxes, which avoids the necessary delay in making requests and obtaining waivers and consents through the mails.”

McElroy on “Transfer Tax Law.”

A similar practice obtains in all the states where there are large cities. The details can be learned by addressing the official or department in the list foregoing.

d. PROPERTY BELONGING TO ANOTHER.

Property belonging to another found in safe deposit box of decedent renders it necessary for the representatives of the estate of the decedent to explain its presence there.

Matter of Francis, N. Y. L. J., Aug. 12, 1913; aff. 163 App. Div. 957.

As, for example when bonds were found in an envelope endorsed by the deceased with the name of his adopted daughter the surrogate said:

“The endorsement on the paper containing the bonds, constituted a declaration by the decedent that the bonds were the property of Florence Elizabeth Crusius. This declaration raises a presumption that the bonds were her property. The presumption, however, was rebutted by the testimony of the executor. He testified that ‘she did not know that such bonds were in existence, or that the papers in reference to it gave her the bonds. There is no proof of a gift; on the contrary, the evidence shows that the bonds were never delivered by the decedent to Florence Elizabeth Crusius. It must therefore be held, for the purpose of this proceeding, that the decedent did not make a valid gift *inter vivos* of the bonds to Florence Elizabeth Crusius.’”

Matter of Crusius, N. Y. L. J., Feb. 26, 1914.

4. Inventory.

a. MUST BE FILED BY EXECUTOR.

All the statutes require the executor or administrator to file an inventory, and, in case of large estates he may be required to fill half a dozen,—one in the state of domicile, one with the Collector of Internal Revenue for the Federal Tax, and an inventory of the personal or real property of a decedent situated in a foreign state.

The will cannot dispense with an inventory.

Matter of Morris, 138 N. C. 259; 50 S. E. 682.

And it must include personal property without the state even though it can never come into the executor's possession.

Appeal of Hopkins, 77 Conn. 644, 645; 60 A. 657.

State v. Bullen, 143 Wis. 512; 128 N. W. 109.

It has been held that the state must show that the estate is taxable before it can compel the executor to file an inventory.

In re Estate of Stone, 132 Ia. 136; 109 N. W. 455.

And that he cannot be compelled to answer questions concerning the property of decedent unless the state has jurisdiction to impose a tax.

Matter of Bishop, 82 App. Div. 112; 81 Supp. 474.

But if such jurisdiction exists he may be punished for contempt on failure to answer proper questions.

Matter of David Kennedy, 113 App. Div. 4-8; 99 Supp. 72.

But an executor of a resident decedent must file an inventory — he has no discretion.

Hooper v. Bradford, 178 Mass. 95; 59 N. E. 678.

And a decree fixing tax, rendered in the absence of an inventory, must be reversed, although it is claimed that all necessary information was before the court.

People v. Sholem, 244 Ill. 502; 91 N. E. 704.

The court said in the *Sholem* case:

“ The people have the right to compel the filing in the County court of the inventories required to be filed by the executor and by surviving partners to aid in determining the extent and value of the estate for inheritance tax purposes, and, while such inventory is not conclusive, the people have the right to have the benefit thereof without having the burden of proving the value of the estate by examining witnesses.

b. FORM OF AFFIDAVIT.

The following form of executor's or administrator's affidavit used in New York county may be of assistance in preparing the inventory:

SURROGATE'S COURT,
COUNTY OF NEW YORK.

<p>In the Matter</p> <p>of</p> <p>The Appraisal, under the Transfer</p> <p>Tax Law, of the Estate of</p> <p>..... Deceased.</p>

<p>STATE OF NEW YORK,</p> <p>COUNTY OF NEW YORK,</p> <p>CITY OF NEW YORK,</p>	<p style="font-size: 3em;">}</p>	<p>ss.:</p>
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....., Executor of the estate of the above-named decedent being duly sworn in this proceeding for the determination of the tax, if any, to be paid upon the assets of the said estate under the Law in Relation to Taxable Transfers of Property, deposes and says:

First.—That the said decedent died a resident of the County of New York, State of New York, on the

day of leaving a Last Will and Testament, a copy of which is herewith submitted, which was duly admitted to probate by the Surrogate's Court of New York County, on the of and that Letters testamentary were duly issued by the said Surrogate's Court of New York County on the of to this deponent whose post office address is

Second.—That as such executor deponent is personally familiar with the affairs of said estate, the property constituting the assets thereof and their fair market value, and with the debts, expenses and charges properly and legally allowable as deductions therefrom. That the decedent at the time of her death had no safe deposit box.

That to the best of deponent's knowledge, information and belief, there is no person better informed than deponent upon the said affairs of this estate.

Third:—That Schedule A hereunto annexed in its various sub-schedules sets forth fully and in detail all the real property in the state of New York, and all the personal property wheresoever situated, owned by the decedent or in which said decedent had any right title or interest at the time of her death, or of which she made any gift, grant or conveyance in contemplation of death, or to take effect at or after death, or which by reason thereof fell into or became part of the assets of this estate by reversion, remainder or otherwise, excepting such as may have passed by virtue of the exercise by the decedent of any power of appointment vested in her by the will or deed or other instrument of another, and enumerated in Schedule C.

Schedule A1 sets forth each and every parcel of real estate in the state of New York of which decedent died seized and possessed, or in which she had any right, title

or interest, together with a statement of the liens and encumbrances upon each at the date of death, giving in the case of mortgages, the date, place, liber and page of record thereof. It also sets forth in the first marginal column the assessed valuation of each of said parcels and in the second marginal column the estimated market value thereof (as appraised by a competent expert in real estate values, whose supplemental affidavit is herewith submitted).

Schedule A2 sets forth all of the moneys left by the decedent at the time of her death, whether in her immediate possession, standing to her credit or in which she had any right, title or interest, in banks of deposit, savings banks, trust companies, or other institutions, whether individually or in trust for or jointly with any other person, giving also separately the accrued interest thereon, if any, down to the last interest day prior to decedent's death in the case of savings banks, and down to the date of decedent's death in all other cases.

Schedule A3 sets forth all wearing apparel, jewelry, silverware, pictures, books, works of art, household furniture, horses, carriages, automobiles, boats, and any and all other personal chattels of whatsoever kind or nature, left by the decedent, together with the fairly estimated market value thereof (as appraised by a competent expert, whose supplementary affidavit is herewith submitted). It also contains a statement of all bonds and mortgages held by decedent and of all claims due and owing decedent at the time of her death, and of all the promissory notes or other instruments in writing for the payment of money of which she died possessed, of whatsoever nature, with interest thereon, if any (except such as are included in the statement of the decedent's interest in a co-partnership or business set forth in Schedule A5) giving the face value and estimated fair market values thereof and if

such estimated fair market values be less than the face value, setting forth in brief the reason for such depreciation as to each item. Said Schedule A3 also contains a statement of any and all moneys payable to the estate from life insurance policies carried by decedent.

Schedule A4 sets forth all the corporate stocks, bonds and accrued interest thereon to the date of decedent's death, or other investment securities owned by the decedent at the time of her death, with the market value thereof at such time, and in the case of rare and unlisted corporate securities giving the state of incorporation of the corporation issuing the same, its capitalization, the value and nature of its assets, its liabilities, its surplus, the book value of its stock, the dividends paid, and any other facts which may be pertinent affecting the value of said securities.

Schedule A5 sets forth the interest of decedent at the time of her death in any co-partnership or business, stating the nature and location thereof, the total capital employed, the gross profits, expenses and net profits of the business for at least three years prior to decedent's death, and any other facts pertaining to such business as may be pertinent to a fair and just appraisal of decedent's interest in said business and the goodwill thereof.

Schedule A6 sets forth in itemized form, together with the fair market value thereof, any other property owned or left by decedent at the time of her death and not included in the preceding sub-schedules.

Fourth.—That Schedule B hereunto annexed in its various sub-schedules sets forth the funeral expenses, administration expenses and counsel fees paid or incurred in connection with the estate, together with the debts and claims against the decedent (except liens and incumbrances upon real estate), whether allowed, paid or contested and rejected by the executor. Deponent also claims

to be allowed as a deduction herein the lawful commissions of the executor.

Schedule B1 sets forth the funeral expenses. Schedule B2 sets forth the expenses of administration and counsel fees paid or estimated. Schedule B3 sets forth the valid debts due and owing by decedent at the time of her death and allowed as just and fair by the executor, together with a separate list of such claims as have been contested or rejected by her (except such as enter into the computation of decedent's interest in any co-partnership or business as set forth in Schedule A5). Schedule B3 also set forth all items claimed by the executor as proper deductions herein, and not included in the prior sub-schedules.

Fifth.— That Schedule C hereunto annexed sets forth all the property, real and personal, which passed at decedent's death by virtue of the exercise by her of any power of appointment vested in her by the will, deed or other instrument of another, together with the fair market value of each and every item thereof and a statement in brief of the sources and derivation of such power, copies of which will, deed or other instrument are submitted herewith. Said Schedule C also sets forth all transfers of any property made by way of gifts, either in trust or otherwise, by decedent at any time prior to her death, which said transfers were made in contemplation of death or to take effect at or after death.

Sixth.— That Schedule D hereunto annexed contains a statement of the names of all persons beneficially interested in this estate at the time of decedent's death, the nature of their respective interests, their relationship, if any, to decedent, together with the ages at the time of decedent's death of all minors, annuitants and beneficiaries for life under decedent's will, if any. It also contains a statement showing which of the beneficiaries

named in decedent's will, if any, died prior to decedent, the dates of their deaths, their survivors, and the relationship of such survivor to decedent.

Seventh.—That deponent has made due and diligent search for property of every kind, nature and description left by the decedent, and has been able to discover only that set forth in Schedule A, and that no information of any other property of the decedent has come to his knowledge, and that he verily believes that decedent left no property except as therein set forth. That all the sums claimed as deductions in Schedule B are lawful, just and fair, that to the best of deponent's knowledge, information and belief the decedent made no gift, grant or conveyance of any property, real or personal, in contemplation of death, or to take effect at or after death, except as may be so specifically set forth in the appropriate sub-schedule of Schedule A.

Deponent further says that wherever in any of said sub-schedules the word "none" has been written in or wherever such sub-schedule has been left blank, such word or omission is to be taken as equivalent to an affirmative allegation by deponent that the decedent left no property of the kind to which sub-schedule relates.

.....

Signature.

Sworn to before me this

....day of....., 19..

c. PREPARATION OF INVENTORY.

Schedule A, 1.—Should set forth, by the description in the deed, each parcel of real estate, within the state, of which the deceased died seized; or in which he had any right, title or interest.

If it is not within the state it should not be included, because not taxable.

Matter of Swift, 137 N. Y. 77; 32 N. E. 1096.

The improvements or buildings on the property should be described; if the property is unimproved it should be so stated. Accrued rents prior to testator's death should be included.

Matter of Keefe, 164 N. Y. 352.

The last assessed valuation, prior to death, on each parcel, should be given. It is the practice in most jurisdictions to add the supplementary affidavit of an expert giving his valuation of the premises. If there have been sales in the vicinity prior to death the affidavit should include a statement of them as this is the best evidence of value.

Matter of Arnold, 114 App. Div. 244; 99 Supp. 740.

As mortgages are deducted from the value of the real estate they should be set forth, if there are any on the property.

Matter of Sutton, 3 App. Div. 308; 38 Supp. 277; aff. 149 N. Y. 618; 44 N. E. 1128.

Taxes which become a lien prior to death should also be set forth here.

Matter of Babcock, 115 N. Y. 450; 22 N. E. 263.

Matter of Freund, 143 App. Div. 335; 28 Supp. 48; aff. 202 N. Y. 556; 95 N. E. 1129.

If dower is claimed as a deduction the claim should be set forth here and the date of the birth of the widow should be given in order that the value of her dower interest may be calculated under the mortality tables.

Devolution of title should be shown where the interest is other than fee simple in order to indicate how the interest was created.

Schedule A2 — Cash on hand and on deposit.

All moneys left by the decedent at the time of his death, in banks of deposit, savings banks, trust companies, or other institutions, should be itemized and set forth in this

schedule. This means money wherever situated, and deposits no matter whether in New York or foreign banks.

Joint and trust accounts should be set forth in this schedule.

See *ante*, Part II, F, p. 130.

Interest accrued and unpaid, distinct from the principal, should be set forth separately. In the case of savings banks, interest should be given down to the last interest day prior to decedent's death; in all other cases down to the date of death. Accrued interest to date of death is subject to the tax.

Matter of Vassar, 127 N. Y. 1-8.

Matter of Hewitt, 181 N. Y. 547.

Schedule A3 — Mortgages, promissory notes, claims due decedent, life insurance.

Mortgages held by decedent should be included in this schedule. The names of the parties, the date of the mortgage, a brief description of the premises mortgaged, the amount of the principal, the interest rate and the interest dates, the place, date, liber and page of recording mortgage, should be given. If any amount has been paid on account of the principal of the mortgage, so state.

Accrued interest on mortgages to date of decedent's death should be separately stated.

All claims in favor of the estate should be included whether valuable or worthless and if in the form of notes or other written instruments for the payment of money they should be set forth giving date, name of maker, date when due, rate of interest, amount of interest accrued to date of death.

A debt forgiven by the will should be set forth in this schedule as an asset of the estate.

Matter of Bartlett, 4 Misc. 380; 25 Supp. 990.

For further discussion as to such debts see *ante* p. 297, and cases there cited.

Pictures, books, jewelry, silverware, works of art, etc., as well as furniture, carriages, horses, motor cars, wearing apparel and all other personal chattels, must be set forth in this schedule.

They must be itemized.

Matter of Leggett, N. Y. L. J., Jan. 13, 1911.

Where the pictures are of value the name of the painting and of the artist should be given.

Matter of Kahn, N. Y. L. J., March 16, 1912.

Schedule A4— Corporate stocks and bonds.

In this schedule should be set forth all corporate securities, including any shares in joint stock associations.

Interest accrued to date of death on bonds and dividends declared on stock even though paid after death are part of the estate and should be separately stated.

Matter of Kernochan, 104 N. Y. 618; 11 N. E. 149.

The denomination of the bond should be given and if the corporation has issued more than one kind of bond that owned by the decedent should be identified.

In listing the stock, state the name of the corporation, and if the corporation issues different kinds of stock indicate which. State the par value and the market value.

The stock is taxable though carried in the name of the brokers.

Matter of Newcomb, 71 App. Div. 606; 76 Supp. 222; aff. 172 N. Y. 608; 64 N. E. 1123.

Securities pledged as collateral should be placed in this schedule calling attention to the fact that the securities were pledged at the date of decedent's death, and that the amount for which they are pledged is set forth under Schedule B3. A statement should be added that the securities so given are the same securities for which the debt is set forth under B-3.

Schedule A5—Interest of decedent in any copartnership or business.

In this schedule should be set forth the interest of decedent at the time of his death in any co-partnership or business, stating the nature and location thereof, the total capital employed, the gross profits, expenses and net profits of the business for at least three years prior to decedent's death.

If the decedent was not interested in any co-partnership or business say so and state his occupation or profession.

Schedule A6—Property not included in other schedules.

In this schedule should be set forth any property left by decedent of whatever kind and nature not included in the foregoing schedules except property passing by power of appointment which should be set forth in Schedule C.

When there is an interest in the estate of another decedent it should be set forth in this schedule; also a remainder interest where there is a surviving life tenant. In the latter case the age of the life tenant should be given so the value of his interest may be calculated.

There should be set out an itemized statement of the assets of the estate in which decedent had the remainder interest. These assets must be given with the same detail as though they were the assets of the estate of the decedent.

Schedule B1.—Funeral Expenses.

The undertaker's bill, cost of advertising death notice, and expense of funeral service should all be separately stated.

The cost of a tombstone is allowed as a deduction.

Matter of Edgerton, 35 App. Div. 125; 54 Supp. 700; aff. 158 N. Y. 671; 52 N. E. 1124.

And of a cemetery lot.

Matter of Maverick, 135 App. Div. 44; 119 Supp. 914; aff. 198 N. Y. 618; 92 N. E. 1084.

Schedule B2 — Administration expenses.

Under this head should be set forth the expenses of administration which include the counsel fees and disbursements necessary in the administration of the estate.

Matter of Westurn, 152 N. Y. 93-102; 46 N. E. 315.

Matter of Purdy, 24 Misc. 301; 53 Supp. 735.

Counsel fees must be reasonable.

Matter of Thomas, 39 Misc. 223; 79 Supp. 571.

Expenses of litigation are allowed when incurred to conserve the estate.

Matter of Gihon, 169 N. Y. 443; 62 N. E. 561.

But disallowed when arising from disputes among the beneficiaries.

Matter of Westurn, 152 N. Y. 93; 46 N. E. 315.

Commissions of the executor or administrator are allowed; but not where the will provides that they shall act without compensation.

Matter of Vanderbilt, 68 App. Div. 27, 30; 74 Supp. 450.

But not on specific bequests.

Matter of Kings County Trust Co., 69 Misc. 531; 127 Supp. 879.

Or on real estate unless the will provides for its sale.

Matter of Saunders, 77 Misc. 54, 67; 137 Supp. 438; aff. 156 App. Div. 891.

In which case broker's commission are allowed also.

Matter of Rothschild, 63 Misc. 615; 118 Supp. 654.

Matter of Shields, 68 Misc. 264; 124 Supp. 1003.

Temporary administrators' commissions are allowed.

Matter of Hurst, 111 App. Div. 460; 97 Supp. 697.

Trustees' commissions are a proper deduction.

Matter of Silliman, 79 App. Div. 98; 80 Supp. 336; aff. 175 N. Y. 513; 67 N. E. 1090.

As to double commissions where executors are also trustees *vide ante*, Pt IV, under "Deductions," p. 305.

Schedule B3 — Debts of decedent.

This schedule should set forth all the debts of and claims against the decedent.

Recite which have been paid or allowed. If any claims have been rejected state which they are, and give the status of each rejected claim.

Mortgage debts belong in Schedule A, not in this schedule.

Doubtful claims should not be allowed as a deduction but should be recited in the appraiser's report, and also in the order fixing tax that the question of the deduction is postponed until the determination of the claim.

Matter of Dimon, 82 App. Div. 107; 81 Supp. 428.

Where the estate has indemnity for a claim against it the indemnity must be set off against the debt.

Matter of Skinner, 106 App. Div. 217, 94 Supp. 144.

Claims barred by the statute of limitations should not be deducted.

See generally:

Hamlin v. Smith, 72 App. Div. 601; 76 Supp. 258.

Holley v. Gibbons, 176 N. Y. 520; 68 N. E. 889.

Schutz v. Morette, 146 N. Y. 137; 40 N. E. 780.

Butler v. Johnson, 111 N. Y. 204; 18 N. E. 643.

And generally if there is a defense to any claim against the estate and the executor or administrator intends to reject it — as a claim barred by the statute of frauds — the defense should be stated and the tax as to the amount of the claim should be suspended — or the deduction disallowed.

Schedule B4 — Deductions claimed and not included in the preceding sub-schedules.

In this schedule should be set forth every deduction

claimed that is not classified as a funeral expense, an expense of administration or a debt of the decedent. They must be separately stated and itemized.

Matter of Friedlander, N. Y. L. J., March 8, 1911.

Exemptions are not included under this head. They are not deductions from the gross estate and have nothing to do with the inventory but are allowed where the tax is fixed by the surrogate.

Schedule C.—Property passing by decedent's exercise of any power of appointment.

If there was a power of appointment which was not exercised the fact should be stated.

All the assets must be set forth with the same detail and particularity as in the main schedules.

If a power of appointment has been created by the will that fact should be set forth and the assets covered by the power separately stated, as taxation as to them must be suspended until it is determined whether they pass under the will of the donor, in case of failure to exercise the power. As to this subject *vide ante* — “Powers of Appointment.”

Schedule D.—Beneficiaries and their interest.

The statement should include, as accurately as possible, the names and addresses of the beneficiaries, the nature of their respective interests, their relationship, if any, to the decedent, together with the ages at the time of decedent's death of all minors, annuitants and beneficiaries for life under decedent's will, if any.

It should also state if any of the beneficiaries named in decedent's will, died prior to decedent.

Morgan v. Cowie, 49 App. Div. 612-615; 63 Supp. 608.

If the devise or bequest to beneficiaries who predecease testator does not fall into the residuary estate then the facts should be given showing to whom the interest goes.

In case of an adopted child the facts should be set forth showing the adoption.

Matter of Butler, 58 Hun 400; 12 Supp. 201; aff. 136 N. Y. 649; 32 N. E. 1016.

And if "mutually acknowledged" the facts bringing the beneficiary within the statute must be clearly established by affidavit or testimony if the latter is required.

Matter of Birdsall, 22 Misc. 180-187; 49 Supp. 450; aff. 43 App. Div. 624; 60 Supp. 1133.

Matter of McMurray, 96 App. Div. 128; 89 Supp. 71.

Matter of Davis, 98 App. Div. 546-549; 90 Supp. 244; revd. on other points 184 N. Y. 299; 77 N. E. 259.

The beneficiary is competent witness to give evidence upon the question of the relation and the acknowledgment thereof.

Matter of Brundage, 31 App. Div. 348-352.

d. FORM OF INVENTORY.

Following is the inventory filed in a recent litigated case arising in New York County:

AFFIDAVIT AND SCHEDULES

SCHEDULE A.

A-1.—Real property.

	Assessed value for year of decedent's death	Estimated market value	Value as ap- praised in this proceed- ing Equity
Undivided one-fourth in- terest in Lot No. 1 on Map of Prospect Hill, Pelham Manor, Town Of Pelham Westchester County, New York. Total lot assessed at \$2,000. Decedent's one- fourth interest only...	\$500 00	\$937 50	\$937 50

	Assessed value for year of decendent's death	Estimated market value	Value as ap- praised in this proceed- ing Equity
Undivided one-half in- terest in Lot 350 on Map of Pelhamville, Town of Pelham, West- chester County, New York. Total lot as- sessed at \$800. De- cedent's one-half in- terest only	\$400 00	\$850 00	\$850 00
Undivided one-half in- terest in Lot No. 371 on Map of Pelhamville, Town of Pelham, West- chester County, New York. Total lot as- sessed at \$400. De- cedent's one-half in- terest only	200 00	500 00	500 00
		<hr/>	<hr/>
		\$2,287 50	\$2,287 50
		<hr/>	<hr/>

SCHEDULE A.

A-2.—Cash in hand and on deposit.

	Amount	Value as ap- praised in this proceeding
Balance standing to credit of decendent in his account at National Park Bank.....	\$8,465 44	\$8,465 44
At Equitable Trust Company.	23 93	23 93

Four certificates of deposit in
United States Trust Co. as
follows:

	Amount	Value as ap- praised in this proceeding
Certificate No. B-5109.....	\$1,000 00	\$1,000 00
Accrued interest.....	374 85	374 85
Certificate No. B-18966.....	2,500 00	2,500 00
Accrued interest	647 15	647 15
Certificate No. B-34517.....	3,000 00	3,000 00
Accrued interest	380 59	380 59
Certificate No. 38657.....	18,000 00	18,000 00
Accrued interest	392 25	392 25

Savings bank accounts as fol-
lows, with accrued interest
to July 1st, 1914:

East River Savings Bank No. 90735	\$3,447 33	\$3,447 33
Emigrant Industrial Savings Bank No. 327283.....	114 76	114 76
Bank for Savings No. 687659..	1,048 68	1,048 68
Bank for Savings No. 687965..	974 73	974 73
Seamen's Bank for Savings No. 330709	1,453 07	1,453 07
Seamen's Bank for Savings No. 332812	1,052 06	1,052 06
Greenwich Savings Bank No. 279177	140 25	140 25
Bowery Savings Bank No. 755122	2,817 64	2,817 64
Bowery Savings Bank No. 754977	2,949 56	2,949 56
	<u>\$48,782 29</u>	<u>\$48,782 29</u>

SCHEDULE A.

A-3.—Personal chattels—bonds and mortgages, promissory notes, claims, insurance, etc.

Bonds and mortgages as follows:	Estimated market value	Value as appraised in this proceeding
Cor. Johnson & Union Avenues, Brooklyn	\$12,000 00	\$12,000 00
4½% interest from July 1st, 1914	217 50	217 50
Cor. 5th Avenue & 40th Street, Brooklyn	12,000 00	12,000 00
4½% interest from October 1st, 1914.....	82 50	82 50
Jamaica Avenue, east of Columbia Avenue, Brooklyn.....	5,500 00	5,500 00
4½% interest from November 1st, 1914.....	17 19	17 19
83rd Street, west of Second Avenue, Brooklyn	5,000 00	5,000 00
4½% interest from October 1st, 1914.....	34 38	34 38
83rd Street, west of Second Avenue, Brooklyn	5,500 00	5,500 00
4½% interest from October, 1st, 1914.....	37 81	37 81
Adelphi Street, south of DeKalb Avenue, Brooklyn.....	4,500 00	4,500 00
4½% interest from October 1st, 1914.....	30 94	30 94
Three registered U. S. Government bonds series dated, August 1, 1898. Int. 3%.		
Bbnd No. 1729.....	1,000 00	1,000 00
Bond No. 1730.....	1,000 00	1,000 00
Bond No. 20846.....	500 00	500 00

	Estimated market value	Value as ap- praised in this proceeding
3% interest on same from November 1st, 1914.....	\$5 00	\$5 00
	<hr/>	<hr/>
	\$47,425 32	\$47,425 32
	<hr/>	<hr/>

SCHEDULE A.

A-4.—Corporate Bonds and Stocks.

	Estimated market value	Value as appraised in this proceedings
Certificates for 33 shares Com- mon Stock of Auto Sales Gum & Chocolate Co., N. Y. Corporation capital \$6,000,- 000 par value of shares \$100 each. Market quotation No- vember 25th, 1914, 9 bid, 10½ asked	\$297 00	\$297 00
\$3,000 par value of Auto Sales Gum & Chocolate Co. 6% bonds. Market quotation No- vember 25th, 1914 at 45....	1,350 00	1,350 00
Certificate for 5,000 shares of Sunday Nevada Mining Co. Stock p. v. \$1.00, S. Dakota Corporation, capital \$1,500,- 000	0	0
Certificate for 10 shares of capital stock of Gas Engine & Power Co. and Charles L. Seabury & Co. (consoli- dated) p. v. \$1.00. Capital \$6,000,000. N. Y. Memo at- tached to said certificate		

	Estimated market value	Value as appraised in this proceeding
signed by Chas. Cory & John M. Cory stating that each owns 5 shares.		
Property of decedent therein was only 5 shares.....	\$250 00	\$250 00
(See letter of Gas Engine & Power Co. & C. L. Sea- bury & Co. annexed as to value.)		
Certificate for 1 share pre- ferred capital stock of Guana- juato Development Com- pany (N. J.). Par value \$100. Capital \$1,000,000. Pfd; \$3,000,000 Common.....	0	3
500 shares Capital stock of Chas. Cory & Son (N. Y.). Capital \$100,000 p. v. \$100 each. One half of entire capital stock was owned by Chas. Cory and the other half by John M. Cory. By agreement between them it was provided that the survi- vor should purchase the stock of the one who should first die and pay \$30,000 for same. Stock of deceased has been sold by executor for that sum pursuant to said agreement, a copy of which is hereto annexed....	30,000 00	103,400 00
	<hr/>	<hr/>
	\$31,897	\$105,300 00
	<hr/>	<hr/>

SCHEDULE A.

A-5.—Interest of decedent in any co-partnership or business.

None.

SCHEDULE A.

A-6.—Property left by decedent of whatever kind or nature not included in the foregoing sub-schedules.

None.

SCHEDULE B.

B-1.—Funeral Expenses.

	Claimed	Allowed in this proceeding
Rev. S. De Lancey Townsend, Clergyman	\$100 00	\$100 00
John Irving, Jr., Undertaker..	703 50	703 50
Boulevard Floral Co., Flowers.	185 50	185 50
T. Pitbladdo, Monument work.	42 45	42 45
J. Weir & Co., Inc., Gardeners.	18 00	18 00
	<hr/>	<hr/>
	\$1,049 45	1,049 45
	<hr/>	<hr/>

SCHEDULE B.

B-2.—Administration expenses.

	Claimed	Allowed in this proceeding
Commissions of Executor to be computed.		
Counsel fees, including cost of advertising for claims, court fees and incidental disburse- ments estimated	\$2,500 00	\$2,500 00
	<hr/>	<hr/>

SCHEDULE B.

B-3.— Debts of decedent.

	Claimed	Allowed in this proceeding
Guaranty Trust Co., loan on collateral \$600 with interest from October 14, 1914.....	\$604 00	\$604 00
Dr. Daniel B. Brinsmade.....	116 00	116 00
E. Hofstaetter & Co.....	3 50	3 50
Federal Income Tax Jan. 1 to Nov. 25, 1914.....	52 63	52 63
	<hr/> \$776 13 <hr/>	<hr/> \$776 13 <hr/>

SCHEDULE B.

B-4.— Deductions claimed and not included in the preceding sub-schedules.

	Claimed	Allowed in this proceeding
John M. Cory, brother and legatee	\$5,000 00	
Ella Cory, sister and legatee.	5,000 00	
Mary J. Cory, sister and legatee	5,000 00	
		00
	<hr/> <hr/>	<hr/> <hr/>

NOTE.— This was a mistake — exemptions are not deductions and should not be set forth in the inventory as they are taken from the real estate.

SCHEDULE C.

Property passing by decedent's exercise of any power of appointment vested in him under the will, deed or other instrument of another.

None.

SCHEDULE D.

Beneficiaries and their interests, etc.

John M. Cory, brother and
legatee, equal one-third of
estate.

Mary J. Cory,
equal one-third of estate.

Ella Cory,
equal one-third of estate.

B.—PROCEEDINGS BEFORE APPRAISER.

In many states the Surrogate, Probate Judge, Tax Commission or Comptroller assess the tax upon the valuations of the inventory, unless there is some reason for being dissatisfied, in which case supplemental affidavits are required or an appraiser is appointed. In case of any controversy an appraiser is always appointed who reports to the Surrogate or Probate Judge who assesses the tax upon his report.

1. Appraisers.**a. APPOINTMENT AND REMOVAL.**

In all the large jurisdictions permanent appraisers are appointed. Such an appraiser is a public officer with quasi judicial functions.

Matter of Hull, 109 App. Div. 248; 95 Supp. 819.

In New York the appraisers are appointed by the state comptroller and one of the appraisers so appointed must be designated by the Surrogate.

Matter of Sondheim, 69 App. Div. 5; 74 Supp. 510.

An appraiser so appointed is a public officer and not subject to the Civil Service Laws.

Weeks v. Kraft, 147 App. Div. 403; 132 Supp. 228.

Nor to the Veteran Acts and may be removed without notice and a hearing even though a veteran or exempt fireman.

People ex rel. McNeile v. Glynn, 128 App. Div. 257; 112 Supp. 695.

People ex rel. McKnight v. Glynn, 56 Misc. 35; 106 Supp. 956.

The surrogate may designate an appraiser on his own motion or upon petition.

Matter of O'Donohue, 44 App. Div. 186; 59 Supp. 1087; 60 Supp. 690.

The provision requiring county treasurers to act as appraisers in certain counties is constitutional.

Matter of Fuller, 62 App. Div. 428; 71 Supp. 40.

In nearly all the states excepting New York the appraiser is appointed and removed by the court.

Where the court was dissatisfied with the appraisal it had power of its own motion to vacate the order appointing an appraiser and appoint a new appraiser and direct him to make a new appraisal on the ground that the original report was insufficient and that the court could not determine the tax therefrom.

County Court v. Watson, 51 Colo. 405; 118 Pac. 974.

But the previously appointed appraiser must be removed for neglect of duty or other proper cause before a new appraiser can be appointed.

Wingert v. State, 125 Md. 536, 542; 94 A. 166.

And in case of fraud or error the court can always order a reappraisal before another appraiser.

State v. District Court, 41 Mont. 357; 109 Pac. 438.

The duty of the surrogate to appoint an appraiser is imperative and he can be compelled to act by mandamus.

Kelsey v. Church, 112 App. Div. 408; 98 Supp. 535.

The surrogate may act as appraiser under Sec. 231 of the New York Statute.

Matter of Baker, 38 Misc. 151; 77 Supp. 170.

Matter of Cameron, 97 App. Div. 436; 89 Supp. 977; aff. 181 N. Y. 560; 74 N. E. 1115.

Matter of Costello, 189 N. Y. 288; 82 N. E. 139.

Matter of Whitewright, 87 Misc. 34; 151 Supp. 241.

Where property of a decedent is situated in several counties, the appraiser appointed by the surrogate first acquiring jurisdiction may appraise all.

Matter of Keenan, 22 N. Y. St. Rep. 79; 5 Supp. 200.

b. POWERS AND DUTIES.

The functions of an appraiser are in many respects judicial as well as ministerial.

Matter of Ullmann, 137 N. Y. 403; 33 N. E. 480.

“ He must have a knowledge of trusts and of wills, and devises and bequests, and of the descent and distribution of property of decedents. He must be an expert upon the value of stocks and bonds and personal property in general. He must be capable of ascertaining the value of real property and of conducting examinations and deciding questions of fact as to residence, relationship and the like.”

Weeks v. Kraft, 147 App. Div. 403; 132 Supp. 228.

The appraiser has power to issue subpoenas and compel the attendance of witnesses. His powers and duties are of a quasi-judicial character, and call for the exercise of sound judgment, discretion and a knowledge of legal principles. They partake of the nature of the acts of commissioners appointed by the court in condemnation proceedings and of referees to hear, try, and determine the issues in actions, or to take proof in actions and report the same to the court with their opinion thereon, all of which demand upon the part of the incumbent an under-

standing of statutory provisions, and ability to pass upon complicated questions of law.

People ex rel. McKnight v. Glynn, 56 Misc. 35; 106 Supp. 956.

“Some of the functions of a taxing officer are ministerial, but it is well established by authority that in determining the value of the property assessed, the extent of claims to exemption, etc., the taxing officer or board acts judicially.”

Matter of Hull, 109 App. Div. 248; 95 Supp. 819.

“The function of an appraiser is somewhat similar to that of a jury called by the court in an equity case to aid its conscience. The whole matter is with the surrogate and continues with him until final determination after appeal.”

Matter of Thompson, 57 App. Div. 317-319; 68 Supp. 18.

An appraiser must rule on admission of testimony.

Morgan v. Warner, 45 App. Div. 424-427; 60 Supp. 963; aff. 162 N. Y. 612; 57 N. E. 1118.

It frequently happens that an appraiser as part of his necessary duties must construe a will.

Matter of Cager, 111 N. Y. 343, 347; 18 N. E. 866.

Matter of Ullman, 137 N. Y. 403; 33 N. E. 480.

Matter of Kimberly, 150 N. Y. 90; 44 N. E. 945.

Matter of Lynn, 34 Misc. 681; 70 Supp. 730.

Matter of Peters, 69 App. Div. 465; 74 Supp. 1028.

A transfer tax appraiser has jurisdiction in the first instance to determine whether certain corporate stock constitutes a part of the estate to be appraised, and such determination must necessarily precede the valuation of said stock for the purposes of the transfer tax. The jurisdiction of the appraiser is not, however, exclusive, and on appeal from the order entered on his report the surrogate has power to decide every question that may be raised in a proceeding under the statute.

Matter of Barnes, 83 Misc. 272; 144 Supp. 794.

The court said in *People ex rel. McKnight v. Glynn*, 56 Misc. 35, 106 Supp. 956:

“ It is alleged that the transfer tax appraiser always acts as a representative of the State Comptroller rather than as a disinterested arbiter. This, if true, is a violation of the obligations of the appraiser and not contemplated by the act. An appraiser should decide with entire impartiality the questions arising before him, whether of law or of fact or mixed questions of law and fact.

“ The State Comptroller is only one of the parties to the proceeding before the appraiser, and is entitled to no more consideration than the representatives of the estate. An error of the appraiser in this regard cannot enter into the construction of the statute. The surrogate may always correct such errors, if duly advised.

“ The powers and duties of the tax appraisers are of a *quasi*-judicial character. They call for the exercise of sound judgment, discretion and knowledge of legal principles. They demand upon the part of the incumbent an understanding of statutory provisions and ability to pass upon complicated questions of law.”

The tendency has been more and more to emphasize the judicial functions of the appraiser. While he cannot himself issue a commission to take testimony in a foreign jurisdiction the surrogate may issue the commission and the testimony may then be adduced before the appraiser.

Matter of Wallace, 71 App. Div. 284; 75 Supp. 838.

The appraiser may not determine questions of residence but the parties usually stipulate that he may take the evidence and submit it for determination to the surrogate.

Matter of Grant, 83 Misc. 257; 144 Supp. 567; aff. 166 App. Div. 921; 151 Supp. 1119.

2. Notice.

a. NOTICE IS JURISDICTIONAL.

A statute that imposes a tax and provides for no notice or hearing or "day in court" for the person who must pay it is unconstitutional.

Matter of Winters, 21 Misc. 552; 48 Supp. 1097.

Matter of McPherson, 104 N. Y. 306; 10 N. E. 685.

Ferry v. Campbell, 110 Ia. 290; 81 N. W. 604.

Martin v. Pollock, (Ga.) 87 S. E. 793.

Matter of Haskins, (Cal.) 149 Pac. 576.

If there is a provision for appeal and rehearing before the court notice of appraisal is not necessary to make the act constitutional.

Hostetter v. State, 26 Ohio Cir. Ct. 702.

Notice of appraisal and right of appeal is sufficient notice and hearing.

Matter of McPherson, 104 N. Y. 306, 323; 10 N. E. 685.

Trippet v. State, 149 Cal. 521; 86 Pac. 1084.

Notice of appraisal must be given to all parties in interest and failure to do so will invalidate the proceedings.

Matter of Wolfe, 137 N. Y. 205; 33 N. E. 156.

Matter of Backhouse, 110 App. Div. 737; 96 Supp. 466; aff. 185 N. Y. 544; 77 N. E. 1181.

So where no proof of notice to parties interested was appended to report of appraiser the report was remitted with directions to give due notice and hold another hearing.

Matter of Froment, N. Y. L. J., Nov. 29, 1916.

"It may be difficult in a given case for the court to ascertain the names and post-office addresses of all persons interested, but if the inconvenience and difficulty encountered in this regard is to determine the power of the court to proceed, then there would arise cases in which

the court would be at a loss as to what disposition it should make of a distributive share. The court admitted the will to probate. It may be presumed that it has, knowledge or the means of knowledge of all persons interested in the property disposed of by it, and can impart this knowledge to the appraiser in its direction to him as to the time which must intervene before the appraisement is made.

State v. District Court, 41 Mont. 357, 366; 109 Pac. 438.

And it must specify the property to be appraised to be binding.

Matter of Morgan, 164 App. Div. 854; 149 Supp. 1022; aff. 215 N. Y. mem.

The State Comptroller was not precluded from taking proceedings in 1902 to assess the transfer tax upon an estate where the decedent died, and whose will was proved in 1895, and the counsel for the estate was informed by the surrogate, upon the basis of the executor's affidavit, that the estate was too small to be taxable,—it appearing that no decree was then or ever entered taxing or exempting the estate, and that consequently no notice of an appraisal was ever given to the persons legally entitled thereto.

Matter of Schmidt, 39 Misc. 77; 78 Supp. 879.

Parties upon whom notice is served are chargeable with notice of all subsequent proceedings, including the adjournments of the hearing from time to time; and it is not necessary that the new notice be served after adjournment.

Hanberg v. Morgan, 263 Ill. 616; 105 N. E. 720.

The proofs must also show that officers representing the people had due notice.

Matter of Bolton, 35 Misc. 688; 72 Supp. 430.

But when the district attorney appears his authority will be presumed.

Matter of Arnett, 49 Hun 599; 2 Supp. 428.

b. NOTICE BY MAIL SUFFICIENT.

“ The Legislature not having prescribed the kind of notice, it may be personal or by mail. If mailed, and the taxpayer lives in a city, the notice if possible should be directed to the street and number of his residence. It is so provided in St. 1909, c. 490, Part II, § 3, requiring a collector of taxes, after receiving a tax list and warrant, to send notice to each person who is assessed, whether resident or nonresident, of the amount of his taxes. The commissioner not having complied with the statute, the tax is uncollectible and the information must be dismissed with costs.”

Attorney-General v. Roche, 219 Mass. 601; 107 N. E. 667.

Notice of application to assess a transfer tax should be given to a legatee, devisee or distributee upon whose interest a tax may be assessed. The statute does not prescribe the manner in which notice may be given on an application to assess a transfer tax, but where personal service is made either within or without the state, the requirements of section 2529 of the Code of Civil Procedure as to the number of days which must elapse between the date of service and the return date governs; in case service is made by mail, the time between the mailing of the notice of motion and the return day should be double that required in case of personal service.

Matter of Whitewright, 89 Misc. 97; 151 Supp. 241.

When an affidavit attached to transfer tax appraiser's report specifically alleges that notice of appraisal required by the statute was duly mailed to the executor his denial, on information and belief, that he received the notice, held insufficient.

Matter of Hart, 98 Misc. 515; 162 Supp. 716.

Although this case was reversed by the Appellate Division, First Department, July 14, 1917; no criticism is made of the ground taken by the surrogate. It appeared however that the appraiser who gave the notice resigned and that another appraiser was appointed in his place who proceeded without any further notice, relying on that given by the former appraiser. The Appellate Division held that this was not good service saying:

“ We think that a transfer tax appraisal ends with the death, resignation or removal of an appraiser and that each appraiser must proceed *de novo*. The transfer tax could not be validly determined without notice to the parties interested and an opportunity to be heard, and the legislature has so provided. There is no statutory provision continuing an appraisal proceeding commenced before one appraiser and permitting his successor to take up and complete his work and no decision sustaining the exercise of such power in a similar case is cited or has been found. It follows, therefore, that the order should be reversed.”

c. WHERE NOTICE IS IMPOSSIBLE.

As soon as it appears that the interest of remaindermen in an estate is contingent, there remains no question between them and the state to which the then existing value of the residuary estate is essential; and a finding as to said value in the original transfer tax proceeding is not conclusive upon the remaindermen.

Matter of Chappell, 83 Misc. 673; 146 Supp. 798.

So where there is a bequest to a charitable corporation yet to be formed no service of process or notice of the appraisement proceedings could or would be binding upon it.

People v. Kellogg, 268 Ill. 489, 497; 109 N. E. 304.

d. PRESUMPTION OF NOTICE.

In the absence of proof to the contrary it will be presumed that the Surrogate has given the required notice to all persons interested in the estate; but this presumption does not extend to appraisers.

Matter of Miller, 110 N. Y. 216; 18 N. E. 139.

And if the surrogate in fact failed to give notice the decree will be vacated.

Matter of Daly, 34 Misc. 148; 69 Supp. 494.

3. Hearings.

a. INFORMAL UPON AFFIDAVITS.

If the comptroller's representative is satisfied with the valuations of the inventory he may accept them and the appraiser will then proceed upon the executor's affidavit.

Where the state comptroller is dissatisfied with the value of an estate as given in affidavits submitted to a transfer tax appraiser on behalf of the estate, he should either examine the affiant as to the basis of his valuation or submit an appraisal by some one possessing the necessary qualifications therefor.

Matter of Gale, 83 Misc. 686; 145 Supp. 301.

If the inventory does not contain all the information desired it may be supplied by the executor, upon request, in the form of supporting or supplementary affidavits of appraisers of jewelry, real estate, and the like. Where the estate is of any size, however, oral testimony is almost always adduced.

“Inventories of estates of decedents made in pursuance of an order of the probate court issued under authority of a statute are admissible for many purposes against every person since they are made by those acting under authority of the law. An inventory or appraisal has, however, been rejected when offered against the admin-

istrator who was in no way connected with it and it was simply a sworn ex parte statement of third persons, though it has been held prima facie evidence against him of the value of the assets in the absence of other proof of value."

Chamberlayne on Evidence, § 3440.

The estimate of an appraiser appointed by one of the parties has no conclusive effect on the rights of the other except where the latter has co-operated in the appointment.

Chamberlayne on Evidence, § 2109.

The affidavits must show facts, not conclusions to have any probative force or support the findings of the appraiser.

Matter of G. C. Stone, N. Y. L. J., Feb. 18, 1911.

b. BURDEN OF PROOF.

In the first instance the burden of proof rests upon the comptroller to show that assets are a part of the estate.

Matter of Enston, 113 N. Y. 174; 21 N. E. 87.

But a prima facie case is always sufficient.

Matter of Lane, 39 Misc. 522; 80 Supp. 381.

Circumstantial evidence may sustain it and overcome the direct assertion of an interested party.

Matter of Palmer, 117 App. Div. 360; 102 Supp. 236.

But mere suspicion that executor concealed assets is not enough.

Matter of Peck, 149 App. Div. 912; 133 Supp. 1136.

"Any apparent attempt, however, upon the part of the executors to evade the payment of a just tax, however reprehensible it may be, does not authorize either the appraiser or surrogate to make an assessment upon suspicion or otherwise than upon convincing evidence of

the transfer of property for which the tax is imposed by the statute.”

Matter of Kennedy, 113 App. Div. 4-8; 99 Supp. 72.

The burden rests on beneficiary when claiming exemption:

(1) As an adopted child:

Matter of Davis, 98 App. Div. 546; 90 Supp. 244.

Matter of Birdsall, 22 Misc. 180; 49 Supp. 450.

Matter of Fisch, 34 Misc. 146; 69 Supp. 493.

(2) Under a gift *inter vivos*:

Tompkins v. Leary, 134 App. Div. 14.

Devlin v. Greenwich Bank, 125 N. Y. 756; 26 N. E. 744.

Matter of Lawrence, N. Y. L. J., Feb. 15, 1915.

Matter of Loewi, 75 Misc. 57; 134 Supp. 679.

(3) As a charitable corporation:

Matter of Townsend, 215 N. Y. 442.

The burden is on the comptroller to show that a gift was made in contemplation of death.

Matter of Ahrens, N. Y. L. J., May 10, 1913.

Matter of Palmer, 117 App. Div. 360; 102 Supp. 326.

Where property is shown to have belonged to the deceased, the burden is on executors to show that it never came into their hands.

Matter of Kennedy, 113 App. Div. 4; 99 Supp. 72.

c. WITNESSES.

The witness must answer the question before the appraiser even though objected to. The materiality is for the surrogate to determine.

Matter of Bell, 94 Misc. 552; 158 Supp. 142.

Opinion evidence by a witness duly qualified is competent as to value.

Matter of Proctor, 41 Misc. 79; 83 Supp. 643.

A party calling a witness to give his opinion on value may qualify him by showing his familiarity with the property and with other property in the neighborhood, his experience in the business, his familiarity with the state of the market and with sales of similar property in the vicinity, and any other facts tending to show his knowledge of the subject and capacity to give an opinion thereon. But while the fact that he knows of sales made and of the prices obtained may be elicited, the prices given in any particular instance are not admissible, except as stated, on the cross-examination of the opposing party, if he sees fit to make the inquiry.

Hancock v. Ross, 50 Cal. Dec. 15.

“ The affidavit submitted to the appraiser was evidently prepared by the attorney for the executrix, and therefore the allegations therein contained are not entitled to the same probative force as the direct testimony of the deponent. When she testified before the appraiser her answers to the questions propounded to her were in her own words, the language was her own, and she evidently testified to the facts from her own knowledge and without the adventitious aid of counsel. As she was an interested witness the court will assume the correctness of the evidence that is least advantageous to her.”

Matter of Thompson, 85 Misc. 291; 147 Supp. 157; mod. 167 App. Div. 356; 153 Supp. 164; aff. 217 N. Y. 609.

In inheritance tax proceedings the testimony of a witness as to personal transactions with the deceased is not barred by Sec. 829 of the code.

Matter of Gould, 19 App. Div. 352; 46 Supp. 506; aff. as to this point, 156 N. Y. 423.

But when this is the only testimony it should be received with caution.

Matter of Thompson, 81 Misc. 86.

Matter of Sharer, 36 Misc. 502; 73 Supp. 1057.

A residuary legatee, son of decedent, may testify to interviews had by him with the decedent tending to show that a particular legacy was given to him by the will in payment of a debt for services rendered by him to decedent.

Matter of Gould, 19 App. Div. 352; 46 Supp. 506; mod. 156 N. Y. 423.

A legatee is not prohibited from testifying before an appraiser as to interviews had by him with the decedent, and which tend to show why, or for what purpose a particular legacy was given to him by the decedent.

Matter of White, 116 App. Div. 183.

Matter of Brundage, 31 App. Div. 348-353; 52 Supp. 362.

“ Upon the hearing before the appraiser real estate experts were examined on behalf of the estate in order to show the value of decedent’s real property in this county. A real estate expert was also examined on behalf of the state comptroller. There was a material difference between their estimates of the value of decedent’s real property. The appraiser adopted the valuation of the state comptroller’s expert. An examination of the testimony shows that this valuation was not unreasonable or unwarranted, and the surrogate therefore will not interfere with the finding of the appraiser.”

Matter of Turner, 82 Misc. 25; 143 Supp. 692.

The report of a financial expert on the valuation of the assets of a partnership or corporation must be under oath.

Matter of Newman, 91 Misc. 200, 154 Supp. 1107.

Matter of Chambers, N. Y. L. J., Jan. 21, 1912.

The affidavit of an executor as to the value of the real estate is competent before the appraiser as an admission against interest.

Simon v. Etgen, 213 N. Y. 589.

The executor of a non-resident decedent is not obliged to testify before the appraiser in reference to the decedent's property without this State, or as to stock of foreign corporations owned by the non-resident decedent.

Matter of Bishop, 82 App. Div. 112; 81 Supp. 474.

But if he so refuses the debts in a foreign jurisdiction cannot and therefore will not be prorated.

Matter of Whiting, 69 Misc. 526; 127 Supp. 960; aff. 200 N. Y. 520.

Where a witness refuses to answer a material question in reference to a gift to himself by the testator, he can be punished for contempt by the surrogate.

Matter of Kennedy, 113 App. Div. 4-8; 99 Supp. 72.

The appraisal of the same real estate in another proceeding is not competent evidence of value.

Matter of Mitchell, N. Y. L. J., March 9, 1912.

d. CORPORATE BOOKS.

The appraiser may subpoena the production of corporate books as this is often the only way in which the value of the stock can be established where there were no sales in the open market.

Matter of Crawford, 85 Misc. 283; 147 Supp. 234.

Matter of Bach, 147 Supp. 229.

The Wisconsin statute did not specifically give this power and a writ of prohibition was granted, the court reasoning that a third party should not be compelled to produce private books and papers.

State v. Carpenter, 129 Wis. 180; 108 N. W. 641.

Books of account are competent to prove a claim against an estate in an inheritance tax case where the entries were made under the direction of the deceased.

People v. Lefens, 269 Ill. 472; 109 N. E. 965.

e. OBJECTIONS.

Where no witnesses are examined and the appraisal is made upon the affidavits furnished by the estate the whole proceeding is informal and the ordinary rules of evidence do not apply. On the other hand where there is a controversy and testimony is adduced the proceeding assumes the form of a trial, with issues joined and facts to be determined. Even under these circumstances the hearing is still of an informal character.

“Evidence given before the appraiser on appraisals for tax purposes is generally informal in character and the Common Law rules of evidence appropriate on trials by jury are not strictly applied and, indeed, in legal theory, have but little application to such proceedings or inquisitions conducted by appraisers.”

Matter of Hettie R. Green, 99 Misc. 582; aff. App. Div., June 30, 1917.

“We think the error of the appraiser in rejecting the evidence ought not to be disregarded, although there was no formal exception taken to the exclusion of the evidence. This record comes to us on an appeal from all the proceedings, and not upon formal case and exceptions. It is a case where the court can see that the ruling may have been very prejudicial to the appellant, and we ought not, therefore, to say that an exception is indispensable to a review of the errors committed during the hearing before the appraiser.”

Matter of Brundage, 31 App. Div. 348; 52 Supp. 362.

But it is not safe for the practitioner to rely upon the leniency of the court and omit the ordinary precautions in taking objections and exceptions. The rules are being applied more and more strictly and particularly against the taxing power. It will be observed that in the cases cited the strict rules of evidence were modified in favor

of the estate. This may be entirely proper; but the attorneys for the tax collector can look for no such assistance.

For example: Where the donor of stock has failed to affix stock transfer stamps at the time of the delivery of the gift no evidence of it can be received by the appraiser pursuant to Sec. 278 of the N. Y. Tax Law.

Matter of Church, 176 App. Div. 910.

Matter of Ball, 161 App. Div. 79; 146 Supp. 499.

But if the evidence of the gift has been received by the appraiser without objection it is too late to move to strike it out on this ground when the matter comes before the surrogate on appeal from the taxing order.

Matter of Mills, 172 App. Div. 530; 158 Supp. 1100; aff. 219 N. Y. 100.

Matter of Cleveland, 171 App. Div. 908; 155 Supp. 1098.

“No evidence of a gift or sale of stock, where the delivery of the certificate was made without the affixing of the required stamps at the time of the delivery, can be received. This results in making proof of such a sale or gift impossible, whenever the defense that no stamp was affixed at the time of delivery of the certificate of stock is properly pleaded.”

Matter of Raleigh, 75 Misc. 55.

Bean v. Flint, 138 App. Div. 846; aff. 204 N. Y. 153; 97 N. E. 490.

Mutual Life Insurance Co. v. Nicholas, 144 N. Y. 95.

Sheridan v. Tucker, 145 N. Y. 145.

The duty to affix the stamps is on the donor and the failure does not affect the validity of the gift; it merely bars the proof of it before the appraiser. So on appeal from an order allowing discontinuance the court said:

“Had the duty to affix a transfer stamp to her father’s declarations of trust been on the infant plaintiff, more weight could be given to defendant’s argument that, despite her motion to discontinue, her suit should go on. But a gift of securities by a father to a child *non sui juris*

imposed on her no such duty. This was not only from her incapacity, but because the duty was laid on the person making the sale, transfer, or agreement (Tax Law, § 272), who was the father and plaintiff's natural guardian. Should such a trust fail in equity because of the father's omission to stamp the papers he had made? The state law declares a rule excluding the receipt in evidence of such unstamped transfer, but does not annul it.

“Strong grounds must be shown to move the judicial discretion to force an infant to carry on a litigation which is clearly against her interests to continue.”

Ambrosius v. Ambrosius, 167 App. Div. 244; 152 Supp. 562.

f. PROOF OF FOREIGN LAW.

In all matters pertaining to non-resident estates foreign laws and decisions must be proved before the appraiser like any other fact. In the absence of such proof it may be presumed that the law of the foreign state is the same as that of the state where the proceeding is held.

Matter of Kennedy, 20 Misc. 531; 46 Supp. 906.

First National Bank v. Broadway National Bank, 156 N. Y. 459; 51 N. E. 398.

Electro Tint, Etc., Co. v. American Handkerchief Co., 130 App. Div. 564; 115 Supp. 34.

4. Report.

a. WHAT IT SHOULD CONTAIN.

The Appraiser's report should have annexed thereto all the testimony and affidavits upon which it is based, a schedule of all the personal property and the value of each item and another list showing the real estate with a brief description and the value thereof, less any mortgage incumbrances or other liens thereon, the amount of debts and testamentary expenses paid and the estimated commissions and additional expenses to be incurred in the settlement of the estate, the names and relationship of all

legatees and distributees and the interest transferred to each respectively.

“Corporations claiming exemption should produce before the appraiser proofs which clearly entitle them thereto; a copy of the decedent’s will should be attached to the report and a summary statement, showing the aggregate net amount transferred, and the particular share thereof passing to each person or corporation. The date of decedent’s death and the names and addresses of the executors or administrators should be given.

“Where the mutually acknowledged relationship of parent and child is claimed to have existed between the decedent and a legatee, proof of such relationship should be produced by the executor or legatee by the affidavit or testimony of at least two disinterested persons who have lived in the neighborhood of the decedent and can testify as to such relationship, from personal conversation with the decedent and observations made during the period which would show that such relationship commenced at or before the child’s fifteenth birthday and was continuous for at least ten years thereafter, and, since June 1, 1905, that the parents of such legatee were dead at the time the relationship commenced, except in the case of a step-child.

“If the value of any assets or part of the decedent’s estate cannot be presently determined, or where the appraiser is in doubt as to the immediate taxability of any interest transferred by the decedent’s will, the circumstances in connection therewith should be fully set forth in the report of the appraiser.

“The value of every future or limited estate, income, interest, annuity, or remainder, as determined by the superintendent of insurance, should be attached to each copy of the appraisers’ report before such report is filed.”

b. WHAT IT MUST SHOW.

“That which is to be reported by the appraiser is the value of the interest passing to the beneficiaries without any deduction for any purpose, or under any testamentary direction.”

Matter of Swift, 137 N. Y. 77-87; 32 N. E. 1096.

The report should be made clearly to express that it embraces all of the property which may be taxed at the date of the death of decedent.

Matter of Earle, 74 App. Div. 458; 77 Supp. 503.

It must show the ground of all findings.

Matter of Bolton, 35 Misc. 688; 72 Supp. 430.

And include all property as to which the appraiser is in doubt whether it is taxable.

Matter of Hendricks, 3 Supp. 281; 18 N. Y. St. Rep. 989.

It is insufficient if it shows that appraiser has appraised “All the property of the deceased made known to him by the executor.” Upon second proceedings it should clearly appear in the report that all of the property remaining of the estate is embraced within the proceedings.

Matter of Earle, 74 App. Div. 458; 77 Supp. 503.

c. WHERE TAXATION IS SUSPENDED.

Where claims are uncertain or doubtful the right to tax should be reserved in the report.

Matter of Morgan, 36 Misc. 753; 74 Supp. 478.

Matter of Rice, 56 App. Div. 253; 61 Supp. 911; 68 Supp. 1147.

Matter of Dimon, 82 App. Div. 107; 81 Supp. 428.

Matter of Westurn, 152 N. Y. 93; 46 N. E. 315.

If taxation is not suspended and the report purports to show that certain legacies are the only ones taxable and

it is confirmed by the surrogate the executor is protected from claim for taxes upon other legacies not included in the assessment.

Matter of Wolfe, 137 N. Y. 205; 33 N. E. 156.

Where an appraiser files a report by which he finds that the value of the interests of life beneficiaries could not then be ascertained and that the remaindermen were indefinite and uncertain and that for these reasons the tax could not then be determined, and such report is confirmed by an order from which no appeal is taken, such order is binding upon the comptroller and the executor as long as the estate remains in the condition in which it was at the time the order was made.

Matter of Lawrence, 96 App. Div. 29; 88 Supp. 1028.

But where the value of the remainder interest was not ascertainable and the appraiser made no mention of it in his report, held not an adjudication that it was not taxable when its value was subsequently ascertained.

Matter of Ely, 157 App. Div. 658; 142 Supp. 714.

On the other hand it has been held that where the taxation of the remainder was not suspended and it could have been presently valued the decree was final in the absence of appeal and no tax could subsequently be collected.

Matter of Morss, 85 Misc. 676; 149 Supp. 41.

Matter of Crerar, 86 App. Div. 479; 67 Supp. 975.

d. FORMS OF REPORT.

Following is an example of an appraiser's report in a recent case in New York City and county:

SURROGATES' COURT,
COUNTY OF NEW YORK.

In the Matter
of
The Appraisal, under the Transfer Tax
Law, of the Estate of MARY HORLER,
Deceased.

To the Surrogates' Court of the County of New York:

I, John J. Lyons, Transfer Tax Appraiser, having been designated by Hon. John P. Cohalan, one of the Surrogates of the County of New York, by an order duly made and entered on the 28th day of October, 1915, certified copy of which order is hereto annexed, together with a copy of the petition upon which same was granted, to appraise the estate of the above-named decedent, pursuant to the provisions of the Law relating to taxable transfers of property, and having given notice by mail of the time and place at which I would appraise said property to all the persons entitled thereto as provided in Section 230 of the General Tax Law as appears by copy of such notice and affidavit of mailing thereof hereunto annexed, and having held such appraisal on the 13th day of December, 1915, at the office of the Transfer Tax Appraisers in and for the County of New York, Room 3100, Woolworth Building, 233 Broadway, Borough of Manhattan, City of New York, and having heard the allegations and proofs of the parties then and there appearing before me and offering the same, and having given due consideration to the affidavits and other papers submitted herein, and having made due and careful inquiry into all the matters and things brought before me in this proceeding, do now make and file the following report.

FIRST.—I report that the decedent herein died a resident of the State of New York on the 24th day of July, 1915, leaving a Last Will and Testament, copy of which is hereunto annexed, which was duly admitted to Probate in this Court on the 8th day of October, 1915, and that thereafter on the 9th day of October, 1915, Letters Testamentary upon the estate of the said decedent, were duly issued by this Court to James Horler, 17 West 10th Street, New York City, as executor.

SECOND.—I further report that the following appearances were noted by me at the appraisal herein: Hon. Lafayette B. Gleason, attorney for the State Comptroller. McReynolds & Hunter, Esqrs., attorneys for Executor, 80 Maiden Lane, New York City, N. Y.

THIRD.—I further report that I found the property left by the decedent herein or in which said decedent had any beneficial interest to consist of the items set forth in Schedule A of the affidavit for appraisal of James Horler hereunto annexed, and that the fair market value of each and every of the said items at the date of the decedent's death is the amount set down by me opposite such item in the column designated "Value as appraised in this proceeding" in said Schedule A.

FOURTH.—I further report that the sums properly to be allowed as deductions herein for funeral expenses, expenses of administration, debts of decedent, and so forth, are the amounts set down by me after the several items claimed in the column designated "Allowed in this Proceeding" in Schedule B of said petition.

FIFTH.—I further report that I find the state and condition of the estate of said decedent at its fair market value as of the date of decedent's death, the 24th day of July, 1915, and as appraised by me in this proceeding to be as shown in the following summary:

Real property in Schedule A1.....	\$3,250 00
Personal property in Schedule A2.....	6,016 00
Personal property in Schedule A3.....	28,449 63
Personal property in Schedule A4.....	0
Personal property in Schedule A5.....	0
Personal property in Schedule A6.....	0
Additional assets referred to in Paragraph 3 of this report	0

Total Assets \$37,715 63

(Exclusive of property passing under a Power of Appointment).

Subject to deductions as follows:

Funeral expenses,	B1.....	\$400
Administration expenses,	B2.....	100
Debts,	B3.....	0
Other deductions,	B4.....	0
Commissions		0

Total Deductions \$500 00

Leaving a net estate of which decedent died
possessed, of 37,215 63

To which is to be added the value of the prop-
erty passing by virtue of the exercise of a
power of appointment vested in said de-
cedent, and set forth in Schedule C and
therein appraised by me at the values writ-
ten in after each item respectively in the
column designated " Value as appraised in
this proceeding," to wit:..... 0

Making the total of all property passing
upon the death of decedent, of..... \$37,215 63

SIXTH.— I further report all the beneficiaries entitled at
the time of decedent's death to an interest in this estate

pursuant to the provisions of law, and of the said decedent's Last Will and Testament, the relationship of such persons to decedent, the amount of the share or interest of each, and whether such share or interest is taxable in this proceeding, to be as hereinafter set forth, all of said beneficiaries being of full age and sound mind except as otherwise designated.

Beneficiaries:		Amount of Interest Exempt	Amount of Interest Taxable
Elizabeth Bogert, daughter —			
Jewelry,	\$325		
Legacy,	5,000		
	<hr/>		
	\$5,325	\$5,000	\$325
James Horler, husband —			
½ interest in realty	3,250		
Residence	28,965.63		
	<hr/>		
	\$32,215.63	\$5,000	\$27,215.63

Respectfully submitted,

JOHN J. LYONS,
Appraiser.

Dated at New York City, N. Y., May 22, 1916.

To illustrate a more complicated case. In the *Matter of Hernandez*, 172 App. Div. 467; 159 Supp. 59; aff. 219 N. Y. 24, it was held that the decedent was a resident of Cuba at the time of his death, leaving a gross personal estate in New York of \$560,765.93 and the rest of his property in Cuba. It was also held that his widow, under the laws of Cuba, where they were married, was entitled to one-half of the "gananciales" or joint gains of the marriage. The value of the estate in New York was .33165 of the total estate. The total debts and funeral expenses amounted to \$253,254.77.

The supplemental appraiser's report pro-rated the debts and ascertained and deducted the "gananciales" as follows:

Gross estate in New York.....	\$560,765.93
Less:	
Debts	\$164,898.61
Funeral expenses	4,070.03
Administration expenses	50,089.59
Commissions	34,196.54
	<hr/>
	\$253,254.77
Pro-rated at .33165 to	83,991.94

Net estate in New York.....	\$476,773.99
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According to the decision of the Surrogate that the widow of decedent is entitled in her own right to one-half the estate of decedent over and above the amount possessed by him at the time of his marriage, by virtue of the laws of the Kingdom of Spain existing and operative in Cuba at the time of the marriage of this decedent, said interest being known as the "gananciales" or joint gains, I find that there should be deducted from decedent's taxable estate a proportionate sum to allow for the effect of such right on the New York estate, and as I find said "gananciales" to be equal to .48095 of decedent's entire estate including realty and wheresoever situate, I hereby allow said proportion of the New York estate as a proper deduction in the sum of

229,304.45

The net taxable estate situate within the State of New York being the sum of.....\$247,469.54

The rest of the report followed the form given in the first illustration.

C.—PROCEEDINGS ON APPEAL.

1. Jurisdiction of Probate Court.

a. EFFECT OF PROBATE DECREE.

The statutes of all the states found the jurisdiction as to the tax proceeding upon the jurisdiction to grant letters. But where another surrogate has already assumed jurisdiction of a tax proceeding a surrogate of another county is without jurisdiction, even though he has granted letters.

Matter of Drake, 94 Misc. 70; 157 Supp. 270.

A decree granting letters of administration or admitting a will to probate is not conclusive as to the jurisdictional fact of residence.

Tilt v. Kelsey, 207 U. S. 43; 28 S. Ct. Rep. 1.

Matter of Horton, 217 N. Y. 363; 111 N. E. 1066.

In the *Horton* case the court said:

“If a probate court of another state otherwise has jurisdiction it may make a decree admitting a will to probate which is binding upon non-residents even though notice has by statute been dispensed with, and such probate becomes conclusive in the absence of contest within such period as is provided by the laws of that state. But the decision of the Ohio court as to the jurisdictional fact of residence was not conclusive.”

It has been held in New York that a decree admitting a will to probate, where the residence of the deceased was alleged as a jurisdictional fact in the petition, and so found by the decree, the finding could not be attacked collaterally in the New York courts.

Bolton v. Shriever, 135 N. Y. 65; 31 N. E. 1001.

Flatauer v. Loser, 211 N. Y. 16.

But, on the other hand, the New York courts are committed to the doctrine that, although the jurisdiction in

the transfer tax proceeding is founded upon the jurisdiction in the probate proceeding, the decree of probate is not conclusive upon the surrogate in the proceedings to fix the tax, as to the residence of the deceased, nor are the beneficiaries estopped from attacking it.

Matter of Grant, 83 Misc. 257; 144 Supp. 567; aff. 166 App. Div. 921; 151 Supp. 1119.

Matter of Hernandez, 172 App. Div. 467; 159 Supp. 59; aff. 219 N. Y. 24.

In the *Hernandez* case the will recited that deceased was a resident of New York county and the petition for its probate so alleged, also the petition for the appointment of an appraiser. But when the transfer tax proceedings were fairly under way the Cuban heirs alleged that the deceased was a resident of Cuba and were successful in establishing that contention. The comptroller appealed on the theory that the probate decree was conclusive on the inheritance tax proceedings.

The Appellate Division in overruling his contention, reasoned thus:

“It is not a collateral action or proceeding in a separate court, but a part of the process of administration in the same court. I do not think therefore that the rule laid down in the two cases applies (the *Bolton* and *Flatauer* cases, *supra*). It seems to me that it comes rather within the reasoning of *Matter of Patterson*, 146 N. Y. 327; 40 N. E. 990; where letters of administration upon the estate of a decedent had been granted to her surviving husband upon his petition asserting that relationship without notice to the next of kin or any appearances by them, and where, at a later period he filed his account and the same was settled by the surrogate awarding payment of the whole surplus to him as a husband. Thereafter the next of kin filed a petition alleging that he was never in fact married to the defendant but had obtained the estate by fraud and asked to have the decree on the accounting and former distribution set aside and

that the assets in the hands of the administrator be paid over by him to the next of kin. The appellant contended that as the next of kin claimed under and in affirmance of the order appointing Patterson administrator they could not at the same time attack it collaterally. But the court held that they did not attack that order at all but, recognizing the authority of Patterson as administrator, they ask that he, as lawful administrator, make an honest and lawful distribution. The order appointing the administrator might stand consistently with the relief asked. It is true that in that case the next of kin had not been cited upon the appointment of Patterson, but the position there taken seems to me in line with that taken by the respondents herein, which is, that conceding the jurisdiction of the Surrogate's Court to admit the will to probate because decedent had property here at the time of his death they have the right to show the amount of such property and the extent of its taxability as decedent was a resident of Cuba and not of the State of New York. Furthermore, the State of New York was not a party to the proceeding for the probate of the decedent's will. In the cases relied on by appellant the question of estoppel arose between those who had either been parties to the original decree or privies of such parties."

b. DECREE OF DISTRIBUTION.

A final decree of distribution after claims for creditors have been advertised bars a tax proceeding in another state under the "full faith and credit" clause of the United States Constitution.

Tilt v. Kelsey, 207 U. S. 43; 28 S. Ct. Rep. 1.

But it does not relieve the executor or beneficiary of his personal liability, as the state is in no way a party to the proceedings.

Attorney-General v. Stone, 209 Mass. 186; 95 N. E. 395.

Attorney-General v. Rafferty, 209 Mass. 321; 95 N. E. 747.

The court said in the Stone case:

“The defendant’s liability could not be affected or destroyed by the action of the Probate Court upon the accounts of the administrator or of the trustee. *Estate of Lander’s*, 6 Cal. App. 744; 93 Pac. 202. That action could not operate collaterally to bar the remedy now sought for. Neither the second nor the final account of the trustee was allowed until after the statute before us had taken effect. If the administrator did not comply with the statute in force when he filed his final account, this failure merely left the succession tax upon the residue of the estate unpaid, and so brought it within the operation of the statute of 1902. The Commonwealth was not a party to any of these accounts, nor was it made so by the publication of notice.”

So it was held that the listing of bonds of a foreign corporation temporarily within the state in the inventory filed for ancillary administration and the decree of distribution are not conclusive as to the facts which entitle the state to demand the tax upon appeal from an order fixing said tax.

Estate of McCahill, 171 Cal. 482; 153 Pac. 930.

In a proceeding in equity to obtain distribution the court may require payment of the tax before distribution although the Probate Court is given special authority over matters of taxation.

Kentucky St. 1906, c. 22, ss. 13, 14, 15, confer jurisdiction on the county court to determine questions arising in relation to the tax, but this jurisdiction is not exclusive when the jurisdiction of the court of equity is invoked to distribute an estate and the interest of each or any number of the heirs at law is subject to the inheritance or other tax. The court at the instance of the official representative of the commonwealth charged with the duty of collecting such tax may require its payment out of the share

or shares of those chargeable with the tax before distributing the estate or funds among them, and thereby save both the tax collector and the heirs the trouble and expense of a separate and independent proceeding in the county court to compel the payment of the tax. The circuit court, therefore, in requiring the payment of the tax before distribution did not exceed its jurisdiction."

Barret v. Continental Realty Co., 130 Ky. 109, 114 S. W. 750.

c. JURISDICTION OF THE TAX PROCEEDINGS.

The court granting letters of administration, letters testamentary or ancillary letters universally has jurisdiction of the inheritance tax proceedings; but it is not necessary in case of a non-resident that ancillary letters should actually have been issued. If there is property of decedent within the county, so that the court would have jurisdiction to issue such letters, it is sufficient.

Matter of Fitch, 160 N. Y. 87; 54 N. E. 701.

The court said: "The jurisdiction of the court is determined by the answer to the question: Had the court power to issue letters?"

The surrogate of the county in which donee of a power of appointment resided has exclusive jurisdiction.

Matter of Seaver, 63 App. Div. 823; 71 Supp. 544.

Or, where the donee was a non-resident, where the real estate over which the power is exercised is situated.

Matter of Lowndes, 60 Misc. 506; 113 Supp. 1114.

Where personal property of a non-resident is located within the county a surrogate has jurisdiction in transfer tax proceedings although the said decedent owned real estate in another county.

Matter of Arnold, 114 App. Div. 244; 99 Supp. 740.

But when letters have been issued the inheritance tax proceedings should be brought before the same court.

Matter of Arnold, 114 App. Div. 244; 99 Supp. 740.

2. Assessment of the Tax.

a. THE JUDGE ACTS AS TAXING OFFICER.

Although the statutes almost universally impose the duty of assessing the tax upon the judge of the court in which the estate is administered, the provisions have been attacked as unconstitutional in imposing ministerial or clerical functions upon a judicial officer,—but this objection has nowhere been sustained.

As the court said in *Union Trust Co. v. Probate Judge*, 125 Mich. 487; 84 N. W. 1101, at page 494: “These duties are necessarily incident to the settlement of estates and may be performed by the probate judge.”

So it was held in Wisconsin that it is the law, not the court, that fixed the tax, but that the court “As an incident to the settlement of estates simply determines, in a judicial way, certain facts necessary to be ascertained to determine how much the tax fixed by law amounts to in a given case. These duties seem to us as judicial in their character, and very properly entrusted to the County court in which the estate is being administered.”

Nunnemacher v. State, 129 Wis. 190, 223; 108 N. W. 627.

Surrogate Fowler of New York county refused to fix the maximum and minimum rates under the New York statute in regard to the immediate taxation of contingent remainders on the ground that such mathematical details were for the convenience of the comptroller, were purely ministerial, and could not constitutionally be imposed upon a judge of a court of record. His opinion was long and learned but he was mistaken in the law and was reversed by the Appellate Division.

The court said:

“It is this latter determination which the learned surrogate has been asked and has refused to make. He has couched his refusal in a very vigorous and positive opinion in which he has undertaken to demonstrate at some length that the Surrogate, now that his court has been made a constitutional court and a court of record, is a judicial officer and that it is beyond the power of the legislature itself to impose upon a judicial officer the performance of purely ministerial and non-judicial duties such as he considers that the state comptroller asks him to perform * * *. It needed much less argument and citation of authorities than has been expended upon the subject to prove that the surrogate is a judicial officer and that, as such, no duties can be lawfully imposed upon him except those of a judicial nature. We do not agree, however, that the determination which the Surrogate has been asked to make is wholly unjudicial in its character or that it is one which cannot be made by a court of record established by the constitution without a surrender of its dignity. It is certainly no more so than is the act of the Surrogate in fixing the amount of the tax chargeable upon a contingent remainder at the highest rate possible under the provisions of the will although both involve incidentally the making of a mathematical calculation. * * *. We find ourselves unable fully to appreciate the suggestion of the learned surrogate that the determination he is asked to make is solely for the benefit of the state comptroller. It is at least as much for the benefit of the trust beneficiaries in consideration for whom the present act was passed and above all it is for the benefit of the due and orderly administration of justice which requires that questions which may give rise to differences and litigation should, when possible, be avoided by apt and proper judicial action.”

Matter of Spingarn, 175 App. Div. 806; 162 Supp. 695.

b. THE TAXING ORDER.

Under the New York practice the surrogate enters the decree fixing the tax “as of course” and if either party is dissatisfied an appeal lies to the surrogate himself. Although this appeal is anomalous in form it works out in practice satisfactorily for the taxing order is really drawn by the appraiser or the attorneys and approved by the court “*pro forma*.”

Weston v. Goodrich, 86 Hun 194; 33 Supp. 382.

The phrase “as of course” relates to the practice rather than to the law in reference to the entry of the order determining the amount of tax, and means that when the report of the appraiser is filed the surrogate is to proceed with the entry of the order without the intervention of any one.

Matter of Fuller, 62 App. Div. 428-432; 71 Supp. 40.

Assuming that a surrogate, in fixing a transfer tax and making the decree assessing it, does not act as surrogate, but simply as a taxing officer, yet the decree upon the taxation, becomes a decree or order of his court.

Matter of Scrimgeour, 80 App. Div. 388, 80 Supp. 636; aff. 175 N. Y. 507; 67 N. E. 1089.

A surrogate in assessing a transfer tax acts judicially and not ministerially. It is true that the power of taxation is one which belongs to the legislative department, and it is equally true that some of the functions of a taxing officer are ministerial, but it is well established by authority, that in determining the value of property assessed, the extent of claims by exemption, etc., the taxing officer or board acts judicially.

Matter of Hull, 109 App. Div. 248; 95 Supp. 819.

c. REPORT MAY BE REMITTED TO APPRAISER.

The surrogate may, of his own motion, or as a result of the appeal from the *pro forma* taxing order remit the

report to the appraiser either before or after entering the order thereon.

Matter of Lansing, 31 Misc. 148; 64 Supp. 1125.

Matter of Kelly, 29 Misc. 169; 60 Supp. 1005.

He may require the correction of mistakes or the taking of further evidence.

Matter of Baker, 38 Misc. 151; 77 Supp. 170.

Matter of Frolich, N. Y. L. J., April 30, 1913.

Matter of Loster, N. Y. L. J., July 29, 1913.

And this may be done on motion after the time to appeal has expired on proper cause shown.

Matter of Head, N. Y. L. J., Dec. 22, 1911.

See Post, Motions to Modify Decree, p. 444.

If there is evidence to sustain the finding of the appraiser and such finding is not clearly against the weight of evidence it will not be disturbed by the surrogate on appeal from the *pro forma* taxing order. So, where the assessed value of the real estate was \$58,000, the evidence submitted for the estate valued it at \$61,000 and that produced on behalf of the Comptroller that it was worth \$70,000 an appraisal of \$68,000 was sustained.

Matter of M. A. Valentine, N. Y. L. J., June 22, 1915.

But the surrogate cannot assess the tax upon mere guess and the record before him must show the facts or it will be sent back for additional proof.

Matter of Wunsch, N. Y. L. J., Jan. 24, 1913.

Matter of Dudley, N. Y. L. J., March 4, 1913.

Matter of De Wollf, N. Y. L. J., Feb. 24, 1913.

Such order is not appealable.

Matter of Astor, 137 App. Div. 922; 122 Supp. 1121.

Nor has the Supreme Court power to vacate such an order.

Matter of Smith, 40 App. Div. 480; 58 Sup. 128.

d. FORMS OF TAXING ORDER.

(1) Where there are no contingent remainders.

These are comparatively simple and a sample is given without further comment.

Order Fixing Tax.

At a Surrogate's Court held in and for the
County of New York at the hall of Records
in the Borough of Manhattan, City of New
York, on the 6th day of June, 1916.

Present — Hon. JOHN P. COHALAN, *Surrogate*.

<p>In the Matter of The Transfer Tax upon the Estate of MARY HORLER, Deceased.</p>
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Upon reading the report of the appraiser, John J. Lyons, Esq., duly filed herein on the 24th day of May, 1916, wherein it appears that said decedent died on the 24th day of July, 1915, and upon motion of Lafayette B. Gleason, attorney for the State Comptroller,

IT IS ORDERED AND ADJUDGED that the cash value of the property referred to in said report, the transfer of which is subject to the tax imposed by the act in relation to taxable transfers of property and the tax to which said transfers are liable is as follows:

Beneficiary	Amount Received	Amount of Exemption	Taxable Amount	Tax Assessed
Elizabeth Bogart, Daughter,	\$5,325	\$5,000	\$325	\$3.25
James Horler, Husband,	32,215.63	5,000	27,215.63	272.16

JOHN P. COHALAN,
Surrogate.

(2) Present Taxation of Contingent Remainders.

The statute at first provided that the tax should be assessed against such remaindermen as a class at the highest possible rate with provisions for a refund in case a less amount proved to be due and Surrogate Fowler of New York county thus interpreted the provision in *Matter of Simmons*, N. Y. Law Journal, June 14, 1912:

“As section 230 of the Tax Law was not changed by the amendment of 1910, it must be presumed that the Legislature intended that the provisions of that section should apply to the assessment of tax under the new rates. Where, therefore, a remainder is contingent, but is limited to beneficiaries of the one per cent. primary rates, it must be taxed as if it passed to a single individual of that class; if it may pass to beneficiaries in the classification of the five per cent. primary rate, it must be assessed as if it passed to a single individual in that class.

“The remainder after the life estate of decedent's widow should be taxed as follows: Mabel S. Tilden, daughter, surviving life estate in the sum of \$250,000; remainder after said life estate to be assessed against the trustees and taxed at the five per cent. rate. All the rest and residue of the remainder should be assessed against the trustees for Joseph F. Simmons, son, at the rate of one per cent. The order submitted upon the appraiser's report may contain a provision that, upon the vesting in possession of any of the remainders, or the exercise of any of the powers of appointment given by decedent's will, an application may be made to modify the order fixing tax in accordance with the actual devolution of the property.”

In practice this proved a hardship as money was diverted from trust estates which would in all probability never reach the treasury and in 1911 the act (Sec. 241) was amended to provide for a temporary taxing order which

should show the difference between the highest rate and that which would be due if the remainder fell in at once. This difference is deposited and interest paid to the trustees while the rest goes to the state treasury as part of the current revenues.

Matter of Billingsley, 1 State Dept. Rep. 569.

Or securities may be deposited in lieu of cash.

Matter of Leuff, 1 State Dept. Rep. 567.

The practice was thus explained in an opinion by the State Comptroller in *Matter of Everett*, 3 State Department reports, 450:

“ To comply with this provision the taxing order should first extend the tax on the remainders as they would be taxable if they had actually vested in possession on the day of the appraisal, and this statement should be followed by the extension of the tax at the highest rate on which there is any possibility of the remainders ultimately vesting; and the difference between the tax at the highest rate and the other tax as shown to be due in the event of the remainders having vested at the date of the appraisal would be the amount the comptroller should retain and pay the income thereon to the executors of the estate until the remainders ultimately vested. There is a remainder to nieces in case of the death of all the children without issue.

It was this form of order that was approved by the Appellate Division in *Matter of Spingarn*, 175 App. Div. 806; 162 Supp. 695; after Surrogate Fowler had refused to sign it, that learned jurist contending that the form in *Matter of Simmons*, *supra* and in *Matter of Valentine*, 88 Misc. 397; 150 Supp. 733 was in accordance with the statute and all that a judicial officer should be asked to do.

To understand the problem we must take an illustrative case, slightly changed as to names and facts.

Assume absolute bequests by testatrix to three children of ten, fifteen and twenty thousand respectively; then a life estate in the residue to the husband, Jean Baptiste, on his death the said residue to be divided among such children as shall survive him. A fourth child is given no specific bequest but takes a contingent remainder in the residue with the others. The residuary estate is appraised at \$78,257 and the husband's life use is calculated by the Insurance department and valued at \$21,591. There is a remainder to nieces in case of the death of all the children without issue.

The taxing order in this supposed case which is slightly altered from an actual case, would, under the bequests assumed, and pursuant to the rulings of the State Comptroller as herein set forth, be as follows:

At a Surrogate's Court held in and for the
County of New York at the Hall of Records,
in the Borough of Manhattan, City of New
York, on the 11th day of June, 1917.

Present.—Hon. JOHN P. COHALAN, *Surrogate*.

In the Matter of The Transfer Tax Upon the Estate of MARY ANN BAPTISTE, Deceased.

Upon reading the report of the appraiser,.....
....., Esq., duly filed herein on the 10th day of June,
1917, wherein it appears that said decedent died on the
18th day of January, 1917, and upon motion of Lafayette
B. Gleason, Attorney for the State Comptroller,

IT IS ORDERED AND ADJUDGED, That the cash value of the
property referred to in said report, the transfer of which

is subject to the tax imposed by the act in relation to taxable transfers of property and the tax to which said transfers are liable is as follows:

A

Beneficiary	Amount received	Amount of exemption	Taxable amount	Tax assessed
Jean Baptiste	\$21,591	\$5,000	\$16,591	\$165.91
Marie Baptiste	10,000	5,000	5,000	50.
Joseph Baptiste	15,000	5,000	10,000	100.
Ann Baptiste	20,000	5,000	15,000	150.
Executors for benefit of 5% class	78,257	0	78,257	4,478.

And it is further

ORDERED AND ADJUDGED that of the tax above assessed against the Executors and Trustees for the benefit of the five per cent (5%) class, the tax upon such remainder or remainders which would be due if the contingencies or conditions had happened at the date of the appraisal of the estate is as if the same vested as follows:

Beneficiary	Amount received	Amount of exemption	Taxable amount	Tax assessed
Ann Baptiste.....	\$19,564 25	.....	\$19,564 25	\$292 92
Joseph Baptiste....	19,564 25	.....	19,564 25	241 28
Marie Baptiste	19,564 25	.....	19,564 25	195 64
Julia Baptiste	19,564 25	\$5,000 00	14,564 25	145 64

Five per cent on \$25,000 is \$1,250, on the next \$50,000 the rate is 6 per cent and the tax \$3,000 and on the balance of \$3,257 above \$75,000 the rate is 7 per cent and the tax \$228, giving the total, \$4,478.

If the life tenant were dead at the date of the appraisal the tax on the remainder interests would be as set forth in the order amounting to a total of \$875.48.

The comptroller deducts this from the total tax on the residue and turns it into the treasury as part of the revenue for the current year from inheritance taxation. The balance, or \$3,603.52, in cash or securities, is deposited

and the interest paid to the trustees, until the termination of the life estate, when the amount will be returned to the estate unless it proves taxable at the 5 per cent rate.

For recent cases involving taxation of contingent remainders at maximum and minimum rates see:

Matter of Zborowski, 213 N. Y. 109.

Matter of Hutton, 176 App. Div. 217, 160 Supp. 223; aff. 220 N. Y. 210.

Matter of Shearson, 174 App. Div. 866; aff. 220 N. Y. mem.

Matter of Steinwender, 172 App. Div. 871; 158 Supp. 779; aff. 221 N. Y. mem.

People v. Starring, 274 Ill. 289; 113 N. E. 627.

e. EFFECT OF DECREE ASSESSING TAX.

If there is no appeal the pro forma order fixing tax is the final termination of the tax proceeding and is final and conclusive on all questions of law and fact litigated before the surrogate of which he had jurisdiction.

Matter of Lansing, 31 Misc. 148; 64 Supp. 1125.

Matter of Crerar, 56 App. Div. 479; 67 Supp. 795.

Matter of Schermerhorn, 38 App. Div. 350; 57 Supp. 26.

Matter of Rice, 56 App. Div. 253; 61 Supp. 911; 68 Supp. 1147.

Payment of the tax to the comptroller and the issuance of his receipt so far as a life estate is concerned does not estop him from appealing from so much of the order as declares that a vested remainder, after the life estate, "is at present undeterminable and is now not subject to tax."

Matter of Bogert, 25 Misc. 466; 55 Supp. 751.

A decree of a surrogate in a transfer tax proceeding is binding only on questions of taxation, and any finding made by the appraiser as to the validity of an alleged indebtedness of decedent to his executrix will not prevent the bringing of an action by legatees to determine the validity of such indebtedness.

Matter of Crawford, 85 Misc. 283; 147 Supp. 234.

In proceedings under the Inheritance Tax Act, the determination of the surrogate that a certain amount of property passed to a residuary legatee is binding upon the question of taxation only, and is not conclusive upon the rights of parties arising outside of the will.

Amherst College v. Ritch, 151 N. Y. 282; 45 N. E. 876.

Where, a former report of an appraiser determines the value of certain remainder interests which are held not presently taxable, such determination and order of the surrogate entered thereon are no bar to a subsequent proceeding to determine the value of the remainders upon the death of the life tenant, "without diminution for or on account of any valuation theretofore made of the particular estates for the purposes of taxation."

Matter of Irwin, 36 Misc. 277; 73 Supp. 415.

Matter of Mason, 120 App. Div. 738; 105 Supp. 667; aff. sub. nom.

Matter of Naylor, 189 N. Y. 556; 82 N. E. 1129.

But the appraiser's report and the taxing order should suspend from taxation specifically such matters as are reserved. The order is final and conclusive as to all questions raised before the appraiser and is presumed to cover all assets found to be taxable.

Matter of Wolfe, 137 N. Y. 205; 33 N. E. 156.

Matter of Mowry, 114 App. Div. 904; 100 Supp. 1131.

Matter of Connolly, 38 Misc. 466; 77 Supp. 1032.

3. Appeal to the Surrogate.

a. NOTICE OF APPEAL.

Under the New York practice an appeal lies from the pro forma order to the surrogate by the party aggrieved, by filing a notice of appeal within sixty days of the entry of the order stating the grounds upon which the appeal is taken.

In New York County it is usually heard on briefs without oral argument except where the surrogate desires it, and it has been held that an extension of time to file briefs must be granted by the court and not merely on stipulation of attorneys.

Matter of Linley, N. Y. Law Journal, February 19, 1914.

When the notice of appeal fails to state the grounds it is dismissed.

Matter of Stone, 56 Misc. 247; 107 Supp. 385.

Matter of Tracy, 86 Supp. 1024.

Where the statute requires the grounds of the appeal to be stated, none except those specified can be considered.

Matter of Davis, 149 N. Y. 539-548; 44 N. E. 185.

The review by the surrogate on an appeal to him is limited to the items specified in the notice of appeal.

Matter of Wormser, 51 App. Div. 441; 64 Supp. 897.

Matter of Reynolds, 163 Supp. 803.

The purpose of requiring the notice of appeal to the surrogate to state the grounds the appeal is made upon was to limit the questions to be reviewed by him to those only stated in the notice, and neither the Supreme Court nor the Court of Appeals can review any question except that reviewed by the surrogate.

Matter of Manning, 169 N. Y. 449-452; 62 N. E. 565.

This rule was emphasized by the Appellate Division in the recent case of *Matter of Rockefeller*, 177 App. Div. 786; 165 Supp. 154, when the court said:

“On the hearing of the appeal before the Surrogate the fact of the payment of these sums by the Executors to the various beneficiaries was stipulated. Objection to the reception of the fact was made by the state comptroller.

The **comptroller** offered certain evidence to which objection was made by the attorneys for the executors and the surrogate, expressed doubt as to his power to consider the evidence, upon the ground that it was no part of the record before the appraiser.

“ In our opinion he did not have power to consider the evidence. The statute requires the notice of appeal ‘ shall state the grounds upon which the appeal is taken ’ (Tax Law, Sec. 232, derived from Laws 1892, Ch. 397, Sec. 13), and none but those specified can be considered. (*Matter of Davis*, 149 N. Y. 539, 548; 44 N. E. 185; *Matter of Manning*, 169 id. 449, 451; 62 N. E. 565.) In the event of new facts arising after the notice of appeal was filed it has been held that ‘ the statute might be construed so as to permit the raising upon an appeal, of a question which did not enter into the original determination and was first made known after the appeal had been taken.’ (*Matter of Westurn*, 152 N. Y. 93, 104; 46 N. E. 315.) We will not, therefore, consider the very interesting questions discussed in the brief of the appellant, that until payment was actually made by the executors to the beneficiaries, the property either passed to the next of kin subject to be divested by the exercise of the power, or that it remains in the trustee and is subject to the tax. These questions were not raised before the appraiser and are not specified in the notice of appeal. If the questions had been raised before the appraiser, the fact of payment could have been proved.”

b. FORM OF NOTICE.

By way of illustration the following is given as an example of a notice of appeal to the surrogate from his pro forma order fixing the tax:

Notice of Appeal to the Surrogate by Executor.

SURROGATE'S COURT,

COUNTY OF NEW YORK.

<p>In the Matter of The Transfer Tax upon the Estate of MARY HORLER, Deceased.</p>
--

Sirs:

PLEASE TAKE NOTICE that James Horler, individually and as executor of the Last Will and Testament of Mary Horler, deceased, is dissatisfied with the appraisal herein of the property of the said Mary Horler, deceased, and hereby objects to the report of the appraiser filed herein on the 22nd day of May, 1916, and to the order or decree made herein, fixing, assessing and determining the Transfer Tax in respect of the property of the said decedent, and entered herein on the 6th day of June, 1916, and hereby appeals to the Surrogate from said appraisal and said assessment and determination of said tax, and from said order or decree.

The grounds upon which said appeal is taken are:

1. That the tax of \$3.25 imposed upon the sum of \$5,325 less an exemption of \$5,000, stated in the order as the amount received by Eliza Bogert as beneficiary, was unlawful and illegal; because the affidavit of James Horler and schedules thereto attached upon which the appraisal was made show that the value of the estate of Mary Horler did not exceed the sum of \$325, the said Mary Horler having been the owner with James Horler, the executor, at her death, of certain other property described in such schedules, which they held as joint tenants, and to which at her death the said James Horler became entitled as

survivor, and there did not therefore pass to Eliza Bogert by the death of Mary Horler any property of the value of \$5,325.

2. That the value of the transfer passing to Eliza Bogert upon and by the death of Mary Horler, did not exceed the sum of \$325.00, and that such transfer is not therefore taxable, under the provisions of the tax law of the State of New York relating to taxable transfers.

3. That the tax of \$272.16 imposed upon the sum of \$32,215.63 less an exemption of \$5000, stated in the order as the amount received by James Horler as beneficiary, was and is unlawful and illegal because:

(a) The Taxable Transfer Act of the State of New York as amended by the laws of 1915, chapter 664, section 2, which amendment went into effect May 20, 1915, under which act as so amended said tax was imposed, in so far as Section 220, subdivision 7 thereof, imposed a tax upon the right of the surviving tenant by the entirety, joint tenant or joint tenants to the immediate ownership or possession and enjoyment of intangible property held in the joint names of two or more persons prior to the 20th day of May, 1915, the date of taking effect of such amendment, under a valid contract made for a valuable consideration, is unconstitutional and void, as impairing the obligation of contracts and as taking property without due process of law and as denying to certain persons within the jurisdiction of the State of New York the equal protection of the laws, and as being an ex post facto law, and as abridging the privileges and immunities of citizens of the United States, contrary to and in violation of Article 1, Section 10, of the Constitution of the United States, and Article 1, Section 6 of the Constitution of the State of New York, and contrary to and in violation of the 14th Amendment of the Constitution of the United States.

(b) The property taxed by said order as having been received by James Horler as beneficiary was property held

by him and the above named decedent Mary Horler at her death as joint tenants under written instruments and under contracts made by them for a valuable consideration prior to May 20, 1915, and under the laws of the State of New York as in force at the time of the making, execution and delivery of such instruments and at the time of the making of said contracts the property affected by such instruments and such contracts and the transfer thereof was not subject to or liable for the payment of a transfer tax upon the death of either of said parties, the rights of the said James Horler and Mary Horler in such property became fixed and vested prior to May 20, 1915, and the tax placed upon the said property and the transfer thereof was and is therefore contrary to and in violation of Article 1, Section 10 of the Constitution of the United States, and Article 1, Section 6 of the Constitution of the State of New York, and in violation of the 14th Amendment of the Constitution of the United States.

4. That the tax of \$272.16 imposed upon the sum of \$32,215.63 less an exemption of \$5000 stated in said order as the amount received by James Horler as beneficiary was and is unlawful and illegal, because at her death Mary Horler and James Horler were seized and possessed of the property making up said sum of \$32,215.63 as joint tenants, each of them owning an undivided one-half interest in such property, and there was therefore only transferred from Mary Horler to James Horler by her death an undivided one-half of such property; and if any part of said property is taxable only the said half thereof should be taxed which was so transferred to James Horler by the death of the above named decedent Mary Horler.

5. That it was and is erroneous and unlawful to include in the items going to make up the net estate of Mary Horler, deceased, one-half of the market value of the real estate mentioned and described in Schedule A of the affidavit of the Executor herein, because said real estate at

her death formed no part of her estate but was held at her death by James Horler and herself as joint tenants and upon her death James became entitled to the said real estate as survivor, and the transfer to James Horler as such survivor was not and is not a taxable transfer under the Taxable Transfer Act of the State of New York.

Dated, New York, July, 1916.

McREYNOLDS & HUNTER,
Attorneys for James Horler indi-
vidually and as Executor of
Mary Horler, deceased,
Office and P. O. Address,
80 Maiden Lane,
Manhattan Borough,
New York City.

To:

LAFAYETTE B. GLEASON,
Attorney for State Comptroller,
DANIEL J. DOWDNEY,
Clerk of the Surrogate's Court
of the County of New York.

4. Determination by the Surrogate.

a. HEARINGS ON APPEAL.

It is not the practice to appoint a special guardian for an infant.

Matter of Post, 5 App. Div. 113; 38 Supp. 977.

Although the review on appeal is confined to the questions raised by the notice, on those questions the surrogate may take evidence to supplement that taken before the appraiser.

Matter of Fuller, 62 App. Div. 428; 71 Supp. 40.

Matter of Gibbs, 60 Misc. 645; 113 Supp. 939.

Matter of Bentley, 31 Misc. 656; 66 Supp. 95.

Matter of Thompson, 57 App. Div. 317; 68 Supp. 18.

In the *Thompson* case the court said:

“ The whole matter is with the surrogate and continues with him until the final determination after appeal. The purpose of the appeal from the surrogate to the surrogate is not simply to review his former determination. There is no occasion to limit it to that. The beneficial result of such a rehearing would be greatly diminished if the determination of the surrogate could not at that time be treated as so far open as to admit new testimony.”

The comptroller is not estopped from appealing by accepting payment of so much of the tax as is conceded to be due.

Matter of Schumacher, N. Y. L. J., March 13, 1914.

In order to justify a reversal by the surrogate there must be a preponderance of evidence one way or the other.

Matter of Gilsey, N. Y. L. J. March 10, 1914.

Where reappraisal is sought on appeal the papers must show some ground therefor, where they failed so to do the surrogate said: “ There is nowhere contained in appellant’s papers a specific fact, or statement of any person competent to judge that this stock is worth one dollar more than the sum for which it has been appraised.”

Matter of Johnson, 37 Misc. 542, 75 Supp. 1046.

Discovery of new facts must be shown to entitle the comptroller to order appointing appraiser to tax assets the valuation of which in a previous appraisal had been suspended.

Matter of De Sala, N. Y. L. J. July 20, 1912.

As to new facts discovered since the hearing before the appraiser the surrogate may take evidence even though they were not specified in the notice of appeal:

“ We think the statute ought to be construed so as to permit the raising upon appeal, of a question which did not enter into the original determination, and which was

first made known after the appeal had been taken, and after the expiration of the sixty days. The surrogate had jurisdiction of the appeal by the notice actually given, and it would be an unwise construction of the act to limit the hearing so as to exclude the consideration of a new question subsequently arising, on the ground that it was not specified in the notice of appeal.”

Matter of Westurn, 152 N. Y. 93, 104; 46 N. E. 315.

But this is confined strictly to newly discovered evidence. It does not apply when the testimony might just as well have been put in before the appraiser.

Matter of Rockefeller, 177 App. Div. 786; 165 Supp. 154.

Nor to objections that might have been taken before him.

Matter of Mills, 712 App. Div. 530; 158 Supp. 1100; aff. 219 N. Y. 100.

b. ON MOTIONS TO EXEMPT.

As we have seen, a question as to inheritance taxation may be raised on a motion to exempt the estate from taxation, without the appointment of an appraiser.

Where such a motion is made on the ground of non-residence the surrogate may take proofs of the facts or send to a referee although the moving affidavits are uncontradicted.

Matter of Hyde, 218 N. Y. 55.

Matter of Bishop, 111 App. Div. 545; 97 Supp. 1098; appeal dismissed 188 N. Y. 635.

But where an appraiser has been appointed and a tax has been imposed the proper remedy is by appeal and not by motion to exempt.

Matter of Cowie, 49 App. Div. 612; 63 Supp. 608.

Matter of Barnum, 129 App. Div. 418; 114 Supp. 33.

Matter of Lowry, 89 App. Div. 226; 85 Supp. 924.

C. ORDER REMITTING REPORT.

After hearing upon appeal from the pro forma decree assessing tax the surrogate, acting judicially, makes a second order affirming, modifying or reversing the original order; or he may remit the whole proceeding back to the appraiser for further testimony or for proceedings in accordance with the surrogate's view of the law. Upon such an order the appraiser makes a second or supplemental report upon which a second taxing order is entered and from which a second appeal lies to the surrogate.

As an example, the following order, remitting the report to the appraiser, was entered in the *Horler* case:

Order Remitting Report to Appraiser.

At a Surrogates' Court held in and for the
County of New York, at the Hall of
Records in the Borough of Manhattan, on
the 27th day of December, 1916.

Present — HON. ROBERT LUDLOW FOWLER,

Surrogate.

In the Matter of The Transfer Tax upon the Estate of MARY HORLER, Deceased.

The appeal of James Horler, individually and as executor of the Last Will and Testament of Mary Horler, deceased, from the appraisal and report filed herein on May 22, 1916, and from the order entered herein on June 6, 1916, fixing, assessing and determining the Transfer Tax in respect to the property of the said testatrix Mary

Horler, having duly come on to be heard and having been heard by me;

Now, upon the facts appearing before me, and after hearing McReynolds & Hunter, attorneys for James Horler, individually and as executor, and Lafayette B. Gleason, Esq., attorney for the Comptroller of the State of New York; and due deliberation having been had and having filed my opinion herein on November 27, 1916;

IT IS ORDERED, ADJUDGED AND DECREED, that the interest which passed to decedent's husband James Horler in the real estate and premises No. 305 Hewes Street, Brooklyn Borough, New York City, by virtue of the conveyance made by her on November 5th, 1914, and which included the right to the possession of the said real estate in fee simple in the event of his surviving the decedent is not subject to a tax under the provisions of the Transfer Tax Law of the State of New York; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the right of James Horler, as survivor to the \$11,500.00 of bonds and mortgages which he and the decedent held as joint tenants at the time of her death under the instruments of assignment and transfer made by the decedent during October and November, 1914, being derived from a contract made and entered into for a valuable consideration, is not subject to a tax under the provisions of the Transfer Tax Law of the State of New York; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the right of James Horler, as survivor to the \$16,000.00 bond and mortgage, which the decedent and he held as joint tenants at the time of her death under the instrument of assignment and transfer made by him on November 5, 1914, to the decedent, being derived from a contract made and entered into for a valuable consideration, is not

subject to a tax under the provisions of the Transfer Tax Law of the State of New York; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the bank accounts which were held in the Irving Savings Institution and in the Emigrants' Industrial Savings Bank in the joint names of decedent and her husband James Horler at the time of her death and which were so held in their joint names prior to the enactment of Chapter 664 of the Laws of 1915 did not constitute any part of the estate of decedent subject to the provisions of the Transfer Tax Law, and the right of James Horler to the said bank accounts as survivor, is not subject to a tax under the Transfer Tax Law of the State of New York; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the order entered herein on June 6, 1916, fixing, assessing and determining a transfer tax in respect to the property of the decedent Mary Horler, be and the same hereby is in all respects reversed; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Appraiser's report, filed herein on May 22, 1916, and upon which said order of June 6, 1916, was made, be and the same hereby is remitted to the said Appraiser for correction in the manner indicated in the opinion filed herein on November 27, 1916.

ROBERT LUDLOW FOWLER,
Surrogate.

d. SUPPLEMENTAL REPORT OF APPRAISER.

Upon the order remitting the original report, the appraiser makes a supplemental report, of which the following is an example:

Supplemental Report of Appraiser.**SURROGATE'S COURT,****NEW YORK COUNTY.**

In the Matter
of

The Appraisal, under the Transfer Tax
Law, of the Estate of MARY HORLER,
Deceased.

I, John J. Lyons, having been duly designated to appraise the estate of the above named decedent, having made and filed my report herein on the 22nd day of May, 1916, and an order having subsequently been entered remitting said report to me for the purpose of correction in the manner indicated in the opinion filed herein on November 27, 1916, by Hon. Robert Ludlow Fowler, Surrogate, New York County, do hereby submit this as a supplemental and amended report:

First.—Paragraph First of the original report is confirmed.

Second.—I further report the following appearances: Lafayette B. Gleason, Esq., attorney for State Comptroller; McReynolds & Hunter, Esqs., attorneys for Executor, 80 Maiden Lane, New York City.

Third.—Paragraph Fifth of the original report as amended in the following particulars:

Schedule A1, real estate, premises known as 305 Hewes Street, Brooklyn, Kings County, New York, assessed at \$6,300, valued at \$6,500, held by decedent and her husband, James Horler as joint tenants. Original report taxed half, \$3,250. Amended to read "Exempt."

Schedule A2 recited two bank accounts, aggregating with interest, \$6,016, held in joint accounts, payable to either or the survivor, by this decedent and her husband, James Horler. Original report taxed in full, \$6,016. Amended to read "Exempt."

Schedule A3 recited items of personal property, jewelry, etc., valued at \$325 and mortgages, held jointly by this decedent and her husband, James Horler, aggregating, with accrued interest, \$28,124.63. These mortgages, taxed in original report in full, should be reported as "Exempt." Total assets under paragraph Fifth should therefore be amended to \$325, and deductions of \$500 confirmed, and net estate therefore shows "Deficit."

Fourth.—Paragraph Sixth should therefore be amended to read as follows: "As no beneficiary is to receive an amount equal to or exceeding the amount of the statutory exemption, I find no tax to accrue in this proceeding."

Respectfully submitted,

JOHN J. LYONS, *Appraiser*.

Dated, New York City, N. Y., March 20, 1917.

e. SECOND TAXING ORDER.

Upon the supplemental report of the appraiser a second taxing order is entered. In the illustrative case, under the surrogate's views of the law, the entire estate was exempt. The order upon the supplemental report was, accordingly, as follows:

Order on Supplemental Report.

At a Surrogates' Court held in and for the County of New York, at the Hall of Records in the Borough of Manhattan, City of New York, on the 4th day of April, 1917.

Present — HON. ROBERT LUDLOW FOWLER, *Surrogate*.

In the Matter of An Application to adjust the Transfer Tax upon the Estate of MARY HORLER, Deceased.
--

On reading the supplemental report of John J. Lyons, Esq., the appraiser, filed herein on the 17th day of March,

1917, wherein it appears that the said decedent died on the twenty-fourth day of July, 115, and on motion of McKeynolds & Hunter, attorneys for the Executor herein, it is

ORDERED AND ADJUDGED that the transfer of the property of which said decedent died seized and possessed, and referred to in said report, is exempt from tax under the act in relation to taxable transfers of property.

ROBERT LUDLOW FOWLER, *Surrogate*.

f. NOTICE OF APPEAL FROM SECOND TAXING ORDER.

From the second taxing order, in the illustrative case, the comptroller appealed to the surrogate, stating the grounds of his appeal as follows:

Notice of Appeal to the Surrogate by Comptroller.

**SURROGATE'S COURT,
NEW YORK COUNTY.**

In the Matter of The Transfer Tax upon the Estate of MARY HORLER, Deceased.

SIRS:

PLEASE TAKE NOTICE that the Comptroller of the State of New York is dissatisfied with the appraisal herein of the property of the above named decedent as made and set forth in the report of the appraiser, filed herein on the 17th day of March, 1917, and with the order fixing and assessing the transfer tax in respect to the transfer of the property of said decedent, made and entered herein on the 4th day of April, 1917, and hereby appeals to the Surrogate from the said appraisal and from the said order assessing tax as aforesaid, on the ground that the same failed to tax certain real estate valued at \$6,500 held by decedent and her husband as joint tenants, and two bank accounts amounting to \$6,016, standing in the name of decedent and

her husband, and certain personal property and mortgages held jointly by decedent and her husband.

Dated, New York, April 6, 1917.

Yours, etc.,

LAFAYETTE B. GLEASON,
Attorney for State Comptroller,
Office and P. O. Address, 233
Broadway, Borough of Man-
hattan, New York City.

To:

MESSRS. McREYNOLDS & HUNTER,
Attorneys for Executor,
86 Maiden Lane, New York City.

DANIEL J. DOWDNEY, Esq.,
Clerk of Surrogate's Court.

g. TAXING ORDER UPON SECOND APPEAL.

If any portion of the estate in the *Horler* case was taxable a second order fixing tax, in the same form as the original order, would have been entered. As the whole estate was exempt, under the court's ruling, the following order was entered:

At a term of the Surrogates' Court held in and for the County of New York at the Hall of Records, Borough of Manhattan, New York City, on the 24th day of April, 1917.

Present Hon. ROBERT LUDLOW FOWLER, *Surrogate*.

In the Matter of The Transfer Tax upon the Estate of MARY HORLER, Deceased.

James Horler, individually and as Executor under the Will of the above named decedent, having appealed from the report of the appraiser duly filed herein on the 22d day

of May, 1916, and the order fixing tax thereon on the 6th day of June, 1916, and on the hearing of said appeal the Surrogate having reversed the order fixing tax and remitted the matter to the appraiser, and a new appraisement having been had and filed herein on the 17th day of March, 1917, and an order having been entered thereon on the 4th day of April, 1917, and the Comptroller having appealed from said last named order and report of the appraiser to the Surrogate on the ground set forth in said Notice of Appeal.

Now, after hearing Messrs. McReynolds & Hunter, attorneys for James Horler as Executor, and due deliberation having been had it is

ORDERED that the said appeal of the Comptroller of the State of New York is hereby denied, and the order fixing tax entered herein on the 4th day of April, 1917, be and the same hereby is in all respects affirmed.

ROBERT LUDLOW FOWLER, Surrogate.

h. NOTICE OF APPEAL TO APPELLATE DIVISION.

From the order thus entered the comptroller appealed to the Appellate Division, which appeal is now pending. The notice of appeal was as follows:

Notice of Appeal to the Appellate Division.

SURROGATE'S COURT,

NEW YORK COUNTY.

In the Matter	}
of	
The Transfer Tax upon the Estate of	
MARY HORLER,	
Deceased.	

SIRS:

PLEASE TAKE NOTICE that the Comptroller of the State of New York hereby appeals to the Appellate Division of

the Supreme Court for the First Judicial Department from the orders of this Court dated December 27th, 1916, reversing the order fixing tax and remitting the report to the appraiser, the order of exemption on the supplemental report made and entered on the 4th day of April, 1917, and from the order denying the appeal of the Comptroller made and entered on the 24th day of April, 1917, and from each and every part of said orders.

Dated, New York, May 4th, 1917.

Yours, &c.,

LAFAYETTE B. GLEASON,
Attorney for State Comptroller,
Appellant,
Office and P. O. Address, Woolworth Building, Borough of Manhattan, New York City.

To:

DANIEL J. DOWDNEY, Esq.,
Clerk of the Surrogates' Court,
New York County.

McREYNOLDS & HUNTER, Esqs.,
Attorneys for Executor,
80 Maiden Lane,
New York City.

5. Before the Appellate Courts.

From the determination of the probate court an appeal lies in all jurisdictions to the appellate courts following generally the practice on appeals from all decrees and orders of the court of probate.

a. WHO MAY APPEAL.

Some question arises as to how far an executor may litigate a question over the amount of inheritance taxes

in which he is interested only to the extent of his personal liability.

So when the question as to taxation was submitted to the Appellate Division on an agreed state of facts and the executors only appealed while all other parties acquiesced, it was held that the executor did not have an appealable interest.

Isham v. N. Y. Assn. for the Poor, 177 N. Y. 218; 69 N. E. 367.

So it was held in Pennsylvania that the executors were not interested in the question whether a tax was presently due and payable. The court said:

“The further question argued, whether the tax is now due and payable, is not raised by this record. The appeal is by the executors and trustees and it does not appear that they have any interest in the question. The executors are nowhere made chargeable with the tax until distribution.”

Handley's Estate, 181 Pa. St. 339, 347; 37 A. 587.

On the other hand, it was held in Illinois, that where a trustee, who in good faith believes that an inheritance tax has been assessed illegally or in an improper amount, may appeal from the judgment not only to preserve the rights of the beneficiaries but to protect himself from personal liability in case he should pay a claim that might afterwards be adjudged illegal.

People v. Northern Trust Co., 266 Ill. 139; 107 N. E. 100.

An executor always has the right to appeal to the surrogate from the pro forma order fixing tax.

Matter of Cornell, 66 App. Div. 167, 171; 73 Supp. 32, modified 170 N. Y. 423; 63 N. E. 445.

On the one hand it is not just that the entire estate should be put to an expense in opposing the tax against a single beneficiary. On the other, the executor usually represents all beneficiaries before the appraiser and the

surrogate. In a recent case the executor was interested both individually and as executor and appealed only in the second capacity. The Appellate Division, in sustaining the appeal, said:

“It is also urged by the respondent that the appellant as executrix is not aggrieved by the order assessing a transfer tax and hence her appeal raises no question. The notice of appeal does not, necessarily, purport to be an appeal by the executrix. The use of the word executrix, it might be urged is merely descriptive, but assuming that the appeal is taken by her as executrix, we think she had a right to appeal. In *Matter of Cornell* (66 App. Div. 167; 73 Supp. 32) it was held that ‘the executor as such is entitled to appeal from an order and decree fixing a transfer tax. He is made personally liable for the tax and is a party aggrieved within the meaning of the provisions of the Code of Civil Procedure relating to appeals.’ The Court of Appeals modified the order of the Appellate Division (170 N. Y. 423; 63 N. E. 445) and in doing so I think necessarily held that the appeal was properly taken by the executor.

“But independent of authority it must be that an executor of an estate against which a transfer tax has been imposed has such an interest therein as entitles him to have an order imposing the tax reviewed on appeal.”

Matter of Dalsimer, 167 App. Div. 365; 153 Supp. 58; aff. 217 N. Y. 608.

The true rule probably is that an executor can appeal only in so far as he protects himself from his personal liability; and, beyond that, the expense of the litigation should be borne by those directly interested.

In New York a foreign executor is held to have the right to appeal on the theory of his personal liability.

Matter of Cornell, 66 App. Div. 167, 171; 73 Supp. 32, modified 170 N. Y. 423.

b. ORDER APPEALED FROM.

In a recent case it was contended by the attorney for the estate before the Appellate Division that the notice of appeal should be not only from the order of the surrogate upon appeal to him from the *pro forma* order fixing the tax but from all the intermediate orders, including an order remitting the report to the appraiser; but the point was ignored, and the established practice of appealing only from the order of the surrogate upon appeal to him in his judicial capacity was tacitly approved:

Matter of Hernandez, 172 App. Div. 467; 159 Supp. 59; aff. 219 N. Y. 24.

Where, after an appeal from a surrogate's decree in a transfer tax proceeding, the matter is remitted to the appraiser and the surrogate makes the usual order fixing the cash value of the property transferred and the amount of the taxes, no appeal lies from his order as a taxing officer directly to the Appellate Division.

Matter of Vietor, 160 App. Div. 32; 144 Supp. 918.

The surrogate acts merely as assessor in determining the tax. When he acts judicially and makes an order on appeal from the taxing order there is no second appeal to the surrogate but direct to the Appellate Division.

Matter of Steinwender, 172 App. Div. 871; 158 Supp. 779; aff. 121 N. Y. mem.

Where the notice of appeal states that it is from the order of January 24, 1903, as resettled by order of March 24, 1903, the resettled order is the one appealed from.

Matter of Post, 85 App. Div. 611; 82 Supp. 1079.

And the discretion of the surrogate in refusing to resettle an order is not reviewable on appeal.

Matter of Sondheim, 69 App. Div. 5; 74 Supp. 510.

When the Court of Appeals has directed the modification of a surrogate's taxing order fixing a transfer tax, a

party to that appeal cannot thereafter raise *de novo* any of the questions which were determined or which might have been determined, by a second appeal taken within sixty days from the entry of the taxing order by the surrogate.

Matter of Cook, 125 App. Div. 114; 109 Supp. 417; aff. 194 N. Y. 400; 87 N. E. 786.

“ When we keep in mind the fact that the surrogate is a mere taxing officer or assessor, when acting under § 231, no incongruity is presented although it is somewhat unusual that a judicial officer should sit in review of his own decision as an assessor. It is, however, to be said that on an appeal to the surrogate, acting judicially, a complete record is submitted and both sides are heard. We are of opinion that the Appellate Division properly dismissed the comptroller's appeal from the order of the surrogate made when acting as a taxing officer.”

Matter of Costello, 189 N. Y. 288; 82 N. E. 139.

c. SERVICE OF NOTICE OF APPEAL.

Failure to file the notice of appeal in the office of the surrogate, within the time prescribed by this section, is not excused by an admission by the attorney for the state comptroller of service of a notice of appeal.

A court or judge cannot extend the time within which an appeal must be taken (Code Civ. Pro., § 784).

Matter of Seymour, 144 App. Div. 151; 128 Supp. 775.

An appeal must be taken within thirty days after service upon the attorney for the appellant of a copy of the judgment or order appealed from, and a written notice of the entry thereof. The period of limitation does not begin to run until the prevailing party serves the necessary notice upon the attorney for the other side, and the service of the other papers and even the written admission of such papers signed by the other attorney do not start the time of limitation running.

McGruer v. Abbott, 47 App. Div. 191; 62 Supp. 123.

d. PAPERS ON APPEAL.

These must include all that were acted upon by the surrogate, including the will.

Astor v. State, 25 N. J. Eq. 303; 72 A. 78.

And the rules require a certificate to this effect from the clerk of the Surrogate's Court but this is usually waived and immaterial papers eliminated by stipulation; the following being the customary form: .

Stipulation Waiving Certification.

Pursuant to Section 3301 of the Code of Civil Procedure, it is hereby stipulated that the papers as hereinbefore printed consist of true and correct copies of the notice of appeal, the order appealed from, and all the papers upon which the court below acted in making the orders appealed from and the whole thereof, now on file in the office of the Clerk of the Surrogate's Court of the county of New York.

Certification thereof in pursuance of Section 1353 of the Code of Civil Procedure is hereby waived.

Dated, New York, May 23, 1917.

LAFAYETTE B. GLEASON,
Attorney for State Comptroller.

McREYNOLDS & HUNTER,
Attorneys for the Executor.

e. COSTS.

In New York costs are not allowed on appeal to the surrogate from pro forma taxing orders. L. 1908, Ch. 310.

Prior to that statute costs were in the discretion of the surrogate.

Matter of Eaton, 55 Misc. 472; 106 Supp. 682.

On proceedings to collect by the district attorney costs are still in the surrogate's discretion and will be imposed against the state where the proceedings were unjustifiable.

Matter of Brady, N. Y. L. J., Feb. 5, 1913.

The Appellate Division when reversing an order denying an application, the granting of which was not opposed by the party against whom it was made, will not award costs of the appeal against such party.

Matter of Collins, 104 App. Div. 184; 93 Supp. 342.

Where a final order assessing a transfer tax upon a trust fund which came into the possession of the trustees after decedent's death is reversed by the Appellate Division, the only costs which can be allowed to appellant are the costs of the appeal, viz.: \$20 before argument and \$40 for argument, besides disbursements.

Matter of Wright, 89 Misc. 108; 151 Supp. 378.

A bill of costs in the Court of Appeals may be awarded to each respondent represented by separate counsel.

Matter of Gibson, 157 N. Y. 680.

And the state comptroller may tax a bill of costs against each of two unsuccessful appellants where so represented.

Matter of Saunders, 86 Misc. 582; 149 Supp. 461.

f. APPEALS TO COURT OF APPEALS.

By a recent amendment these can only be taken where there is a reversal by the Appellate Division, or the decision is not unanimous, unless leave to appeal is granted on motion by the court below and if denied by that court, on motion to the Court of Appeals. The amendment took effect June 1, 1917.

Such appeals are limited to questions of law.

Matter of Thorne, 162 N. Y. 238.

And must be from a final order.

Matter of Browne, 195 N. Y. 522; 88 N. E. 1115.

Matter of Vivianti, 204 N. Y. 513.

A certification of a question by the Appellate Division will not be reviewed if it involves a question of fact.

Matter of Martin, 219 N. Y. 557, 114 N. E. 1071.

Where the surrogate is reversed and the order of the Appellate Division is silent on the question it will be presumed by the Court of Appeals that the reversal was on questions of law only.

Matter of Keefe, 164 N. Y. 352.

g. TO SUPREME COURT OF THE UNITED STATES.

The record must show that a Federal question is involved and that it was brought to the attention of the state court.

Sec. 709 U. S. Revised Statutes.

Matter of Stickney, 185 N. Y. 107; 77 N. E. 993, writ of error dismissed, sub. nom.; *Stickney v. Kelsey*, 209 U. S. 419; 28 S. Ct. Rep. 508.

Matter of Houdayer, 150 N. Y. 37; 44 N. E. 718, writ of error dismissed sub nom., *Scudder v. Comptroller*, 175 U. S. 32; 20 S. Ct. Rep. 26.

“ When no such ground has been presented to or considered by the courts of the state, it cannot be said that those courts have disregarded the Constitution of the United States, and this court has no jurisdiction.”

Scudder v. Comptroller of New York, 175 U. S. 32-36; 20 S. Ct. Rep. 26.

Where judicial proceedings in one state are relied upon as a defense to an assessment by the authorities of another state, a right under the Constitution of the United States is specially set up and claimed, though it was not in terms stated to be such a right.

Tilt v. Kelsey, 207 U. S. 43; 28 S. Ct. Rep. 1.

Where the best that can be said for the plaintiffs in error is that the action of the state court was ambiguous, the United States Supreme Court will resolve the ambiguity against the parties complaining, who are bound to show clearly that a Federal right was impaired, rather than endeavor to spell out a Federal question to aid a defense which is merely technical and destitute of substantial merit.

Stickney v. Kelsey, 209 U. S. 419; 28 S. Ct. Rep. 508.

D.— SUBSEQUENT PROCEEDINGS.

1. Motions to Modify Decree.

It frequently happens that beneficiaries discover some reason why they think the tax should not be paid after the time to appeal from the taxing order has expired. The only remedy is by motion to modify or vacate the taxing order. Such motions must be on notice to the Comptroller. They cannot be entertained *ex parte*.

Matter of Fulton, 30 Misc. 70.

a. WHERE THERE WAS A MISTAKE OF FACT.

This may be corrected on motion and where there is no dispute and the mistake is obvious the surrogate may correct it without sending the matter back to an appraiser.

Matter of Cameron, 97 App. Div. 436; 89 Supp. 977; aff. 181 N. Y. 560; 74 N. E. 1115.

Where the surrogate has by order confirmed the appraiser's report without noticing that it is defective, he has authority to vacate his order of confirmation and send the report back to the appraiser for correction.

Matter of Earle, 74 App. Div. 458; 77 Supp. 503.

A mistake in an administrator's affidavit whereby stock worth \$14,193 was appraised at \$47,310 was corrected though the two-year limitation had elapsed.

Matter of Boyle, 92 Misc. 143; 156 Supp. 173.

Where a debt had been inadvertently overlooked the deduction was allowed on motion and the order modified by reducing the tax proportionately.

Matter of Campbell, 50 Misc. 485.

Where the executor believed that notes would be paid by the makers at the time of the appraisal, but they proved worthless, decree modified.

Matter of Sherar, 25 Misc. 138; 54 Supp. 930.

Where the appraiser misconstrued a will and a beneficiary paid tax on property which proved afterwards not to belong to him,—held a mistake of fact and tax refunded.

Matter of Willets, 119 A. D. 119; 100 Supp. 850; 104 Supp. 1150; aff. 190 N. Y. 527; 83 N. E. 1134.

So, where a mathematical mistake was made in computing the tax.

Matter of Scott, 208 N. Y. 602.

And generally, clerical errors are cured on such motions.

Matter of Henderson, 157 N. Y. 423; 52 N. E. 183.

b. WHERE THERE WAS LACK OF JURISDICTION.

Such motions are granted where the moving papers show that the appraiser lacked jurisdiction as when both parties mistakenly supposed that the estate was, under the law, subject to a transfer tax.

Matter of Scrimgeour, 175 N. Y. 507; 67 N. E. 1089.

Or where the tax has been paid under an unconstitutional statute.

Matter of O'Berry, 91 App. Div. 3; 86 Supp. 269; aff. 179 N. Y. 285; 72 N. E. 109.

Norton v. Selby County, 118 U. S. 425; 6 S. Ct. Rep. 1121.

Aetna Insurance Co. v. Mayor, 153 N. Y. 331; 47 N. E. 593.

Although the transfer tax has been levied, the surrogate has power to modify his decree, when the remaindermen, who failed to appear on the appraisal were only notified that their father's estate would be appraised, and the appraisal included property belonging to a trust fund over which the father exercised an appointment in favor of such remaindermen.

Matter of Backhouse, 110 App. Div. 737; 96 Supp. 466; aff. 185 N. Y. 545; 77 N. E. 1181.

A surrogate has power on a motion to vacate so much of a decree assessing property subject to a transfer tax as

was made without jurisdiction after the time to appeal from said order has expired.

Matter of Jones, 54 Misc. 202; 105 Supp. 932.

Matter of Silliman, 79 App. Div. 98; 80 Supp. 336; aff. 175 N. Y. 513; 67 N. E. 1090.

So where the appraiser taxed property passing under a power of appointment and the heirs were held to receive it from an ancestor and not under the power; the time to appeal had long expired and the motion to modify was granted six years later.

The court said:

“ In making the motion to modify the order, and on the appeal, the executor contended that both the tax appraiser and the surrogate were without jurisdiction to impose a tax on these interests, inasmuch as there was no question of fact involved, and on the uncontroverted facts as matter of law the children took nothing so far as these interests are concerned from the testatrix. The children of the testatrix are, of course, concluded by the determination of the tax appraiser as confirmed by the surrogate, with respect to the value and the tax on any property they took by virtue of their mother's will, but not so, we think, with respect to any of the three interests in question which they did not take under her will. It has been held with respect to property passing under a will, which is not subject to the transfer tax, that there is no jurisdiction to impose the tax, and that it should be refunded after having been paid.”

Matter of Coogan, 27 Misc. 563; 59 Supp. 111; aff. 45 App. Div. 628; 61 Supp. 1144; 162 N. Y. 613; 57 N. E. 1107.

Matter of Morgan, 164 App. Div. 854; 149 Supp. 1022; aff. 215 N. Y. mem.

c. MAY NOT CORRECT AN ERROR OF LAW.

An error of law can be corrected by appeal only.

Matter of Niven, 29 Misc. 550; 61 Supp. 956.

A decree of the surrogate cannot be opened to correct an error of law made in calculating executors' commissions, and the remedy is by an appeal from the decree. If the surrogate erred in allowing the commissions objected to, the error was one of law and not a clerical mistake.

Matter of Monteith, 27 Misc. 163; 58 Supp. 379.

A debt overlooked at the time of the appraisal was held not sufficient ground in *Matter of Hamilton*, 41 Misc. 268; 84 Supp. 44; but such relief is usually granted.

And where the application is based on the proposition that the appraisal was too high after the time to appeal has expired the motion is to correct an error of law and not a mistake of fact and is invariably denied.

Matter of Van Nest, N. Y. Law Journal, November 8, 1913; aff. 168 App. Div. mem.

Matter of Wallace, 28 Misc. 603; 59 Supp. 1084.

When the moving affidavits merely stated that the assets had been overvalued supported only by appraisal of real estate brokers at a much lower figure, application denied.

Matter of Barnum, 129 App. Div. 418; 114 Supp. 33.

The same rule applied against the state where under-valuation claimed without facts to support the assertion.

Matter of Johnson, 37 Misc. 542; 75 Supp. 1046.

When the moving papers disclosed no other ground than the sale of real estate at a lower figure the surrogate has no power to modify the decree assessing tax.

Matter of Lowry, 89 App. Div. 226; 85 Supp. 924.

The same rule is applied against the state: The mere fact that assets have since sold for a larger sum than the value fixed on the appraisal is not ground for vacating the decree.

Matter of Bruce, 59 Supp. 1083.

Of course if the discrepancy were sufficient to indicate fraud the fact would be competent, coupled with other evidence.

Where the facts were in the possession of the estate which might have reduced the appraised value and were not disclosed there is no ground for re-opening the case. So, where a beneficiary paid the tax and eight years afterwards sought a refund on the ground that he took the property by deed from the deceased, *inter vivos*, and the deed was not recorded nor produced on the appraisal it was held that he was not entitled to a refund.

Matter of Mather, 90 App. Div. 382; 85 Supp. 657.

On the other hand the mistake may be one of mixed law and fact where the relief is usually granted. To illustrate: Taxes computed on a mutually mistaken construction of law and fact or paid as a temporary payment should be refunded. Money paid by executors on a life estate, in ignorance of the fact that the life estate had been terminated by death, may be recovered back by the executors as paid under a mistake of fact. This is not a voluntary payment, as to constitute a voluntary payment it must be made with full knowledge of all the facts and circumstances. Where a beneficiary under misconception of the law advanced the money to pay more than was really chargeable to him, and where the property is sold for the tax, he is subrogated to the rights of the state and should be repaid what he has erroneously expended.

Sherman v. United States, 178 U. S. 150, 152, 20 Sup. Ct. 779.

Matter of Skinner, 106 App. Div. 217; 94 Supp. 144; mod. 92 Supp. 972.

Kahn v. Herold, 147 Fed. 575; aff. 86 C. C. A. 598; 159 Fed. 608; 163 Fed. 947.

Matter of Wilcox, 118 Supp. 254.

d. LACHES.

Where a charitable corporation failed to appear before the appraiser and claim exemption or to notify its attorney of the bequest in time to appeal the court refused to grant relief on motion to modify the decree fixing the tax. It said:

“ By subdivision 6 of Section 2490, Code of Civil Procedure, the surrogate is authorized ‘ To open, vacate, modify or set aside or to enter as of a former time, a decree or order of his court; or to grant a new trial or a new hearing for fraud, newly-discovered evidence, clerical error, or other sufficient cause only in the same manner, as a court of record and of general jurisdiction exercises the same powers.’ The petition presented to the surrogate does not allege fraud, newly-discovered evidence or clerical error. Did it allege ‘ other sufficient cause ’? That question was one addressed to the judicial discretion of the surrogate, and he determined that the oversight of the respondent and failure on its part to bring to the attention of its attorneys information possessed by it, when it was notified of the hearing before the appraiser, was not sufficient cause to grant a new hearing. He might also have determined that the allegations presented in the petition did not disclose that the respondent would on said statements be entitled to exemption. For the reasons stated the order of the Appellate Division must be reversed and the order of the surrogate affirmed, without costs.”

Matter of Townsend, 215 N. Y. 442.

So where the appraiser failed to deduct proportionate commissions on foreign assets and the executor neglected to take any appeal, application denied.

Matter of Badger, N. Y. L. J., June 8, 1912.

e. BAD FAITH.

Of course the court will not grant such an application where there is reason to believe that it is not made in good

faith. This was very recently illustrated in a rather curious case before the New York County Surrogate's Court. The opinion speaks for itself:

“ This is an application by a person claiming to be the sole heir and next of kin of the decedent for an order vacating the order heretofore entered which adjudged that the decedent was not a resident of this state at the time of his death, and that his estate therefore was not subject to a tax under the provisions of the Tax Law of this state. After an appraiser had been designated by this court to appraise the estate of the decedent subject to a transfer tax, the executor made an application to vacate the order designating the appraiser and to declare the estate exempt from taxation upon the ground that the decedent had his domicile in France at the time of his death. The state comptroller did not oppose the motion, and an order was entered adjudging that the estate was exempt from taxation because the decedent was not a resident of this state. The present applicant formally consented to the entry of that order. Subsequently the applicant's claim to a part of the estate was contested by other persons upon the ground that under the law of France the property passed to the contestants and not to the applicant. Apparently realizing the validity of this claim the applicant now comes to this court and asks that the order of exemption be vacated and that it be adjudged that the decedent had his domicile in this state. He had no compunction in joining in the application to this court to declare the decedent a resident of France when such adjudication rendered him exempt from the payment of a transfer tax in this state, and now that he finds it to his interest to have the court make a contrary adjudication, he has no hesitation in reversing his position and contending that the decedent had his domicile in this state. The court looks with grave distrust upon such an application. As far as the petitioner

is concerned there is no newly discovered evidence submitted on this application and no reason is adduced which would warrant the court in vacating the order heretofore entered. The petitioner's right to the property will be amply protected in the accounting proceeding now pending, and the right of the state to a tax upon the estate of the decedent may be determined by this court in a proper proceeding brought for that purpose. Application denied."

Matter of Chadwick, N. Y. L. J., June 23, 1917.

f. STATUTE OF LIMITATIONS.

Such an order will not be made where the tax has been paid and the Statute of Limitations has intervened.

Matter of Hoople, 179 N. Y. 308; 72 N. E. 229.

Matter of Buckingham, 106 App. Div. 13; 94 Supp. 130.

Matter of Von Post, 35 Misc. 367; 71 Supp. 1039.

And the statute may be retroactive, affecting payments already made; *Matter of Hoople*, *supra*, where the court said:

"It is a fundamental principle of our jurisprudence that no action will lie against a sovereign state, or any of its officers, to enforce an obligation of the state without express legislative permission (*People v. Dennison*, 84 N. Y. 272; *Lewis v. State of N. Y.*, 96 N. Y. 71; *Locke v. State of N. Y.*, 140 N. Y. 480; 35 N. E. 476; *Smith v. Reeves*, 178 U. S. 436; *Flagg v. Bradford*, 181 Mass. 315); and when a state does abdicate this attribute of sovereignty and permits itself to be sued, the citizen who benefits by such an act of grace acquires no vested right thereby, but simply a privilege voluntarily granted by the state, which may be hedged about with terms and conditions, and may be withdrawn as freely as it was given. (*Beers v. Arkansas*, 20 How. (U. S.) 527; *Parmenter v. State of N. Y.*, 135 N. Y. 154; 31 N. E. 1035; *Baltzer v. North Carolina*, 161 U. S.

240; *Railroad Co. v. Tennessee*, 101 U. S. 337; *Railroad Co. v. Alabama*, 101 U. S. 832.)

“ In the light of these principles it is obvious that the statutes under discussion (chap. 399, Laws 1892; chap. 284, Laws 1897; chap. 382, Laws 1900) invested the respondent with no absolute right, but conferred upon him a mere privilege, the extent and duration of which depended entirely upon the language conferring it.”

General statutes of limitation do not run against the state in transfer tax proceedings.

Bradford v. Storey, 189 Mass. 104; 75 N. E. 256.

Where a proceeding to collect was brought within the limitation and was amended after the limitation had run to increase the demand, held that it related back to the commencement of the proceeding, and was within the statute, as it did not set up a new cause of action.

Connell v. Crosby, 210 Ill. 380; 71 N. E. 350.

2. Motions to Remit Penalty.

Most of the statutes provide that interest may be reduced from 10% to 6% in case of “unavoidable delay.” Such reduction must be secured on motion to remit the penalty.

On such motion the burden of proving that the delay was unavoidable is on the estate.

People v. Prout, 53 Hun 541; 6 Supp. 457.

And the affidavits must make a sufficient case. So when they merely recited that the executors and trustees were non-residents, had no actual notice of the tax law, or that any tax was due the application was denied.

Matter of Read, 204 N. Y. 672.

Many of the statutes provide that litigation to oppose the tax shall not be construed as “unavoidable delay.” In the absence of such a provision the Wisconsin court so construed it.

“ Litigation to determine doubtful and perplexing questions as to the liability of transferees for the inheritance tax and delays occasioned thereby constitute ‘ necessary litigation or other unavoidable delay.’— 10% penalty remitted.”

State v. Pabst, 139 Wis. 561; 121 N. W. 351.

Matter of Moore, 90 Hun 62; 35 Supp. 782.

When the tax would be the same whether the deceased died testate or intestate the pendency of a will contest cannot be pleaded as unavoidable delay.

Shelton v. Campbell, 109 Tenn. 690; 72 S. W. 112.

“ Unavoidable delay ” may be a misnomer of the trustee named in the will which was not discovered for some time.

In re Banks, 5 Pa. Co. Ct. 614.

The practice is for the surrogate not to entertain a motion to remit penalty until after the report of the appraiser has been filed.

Matter of Theodore Schumacher, N. Y. L. J., July 29, 1914.

The surrogate has not power to direct that no interest shall be charged. He is limited to directing, upon a proper case shown, a reduction of the interest from 10% to 6% in accordance with the provisions of the second sentence of § 223.

Matter of Golden, N. Y. L. J., July 29, 1914.

It is the penalty alone that can be remitted. There is no provision in any of the statutes for the remission of the interest when it has once accrued and the rights of the state have vested thereto.

Matter of Griggs, 163 Supp. 1096.

It is not a matter of equitable relief and therefore payment to the wrong official under a misapprehension of the

law is not ground for the granting of relief that is not within the power of the court to afford.

People ex rel. Loun v. Cook, 158 App. Div. 74; 142 Supp. 692; aff. 209 N. Y. 578.

Application to remit the interest can only be made to the court upon motion, and is not to be the subject of an appeal from the decree fixing the tax as the decree should not concern itself with the amount of interest.

Matter of De Graaf, 24 Misc. 147; 153 Supp. 591.

Application for the remission of interest will be denied unless it is shown that the reasons required by the statute existed and caused the delay.

Matter of Wormser, 51 App. Div. 441; 64 Supp. 897.

Relief from the payment of interest will not be granted where the only reasons given were that the executors were ignorant of the law, or that such payment will be a hardship to the legatee.

Matter of Platt, 8 Misc. 144; 29 Supp. 396.

The appraiser cannot remit the penalty. Special application showing grounds therefor must be made to the surrogate.

Matter of Skinner, 106 App. Div. 217; 94 Supp. 144.

“ The order fixing tax was entered before the expiration of the eighteen months within which the tax could be paid without penalty, and as the executrix failed to take advantage of this fact the application is denied.”

Matter of Brower, N. Y. L. J., July 15, 1913.

Neither is payment into court under a court order a payment and discharge of the tax.

Pitman v. State, (Okla.) 158 Pac. 1137.

3. Mandamus.

The surrogate cannot by order direct the comptroller to refund a tax already paid.

Matter of J. H. B. Dwight, N. Y. L. J., Jan. 19, 1915.

Matter of Meyer, N. Y. L. J., Jan. 31, 1914.

Matter of Tillinghast, 94 Misc. 76; 157 Supp. 379.

a. WHEN WRIT GRANTED.

Mandamus is the proper remedy to compel a refund where the tax has been paid erroneously, as where the decree of the surrogate was entered without jurisdiction.

Matter of Coogan, 27 Misc. 563; 59 Supp. 111; aff. 162 N. Y. 613; 57 N. E. 1107.

Where the tax has been paid erroneously mandamus will lie to compel the refund of interest as well.

Matter of Hanford, 113 App. Div. 894; aff. 186 N. Y. 547.

Matter of Wood, 91 App. Div. 3; 86 Supp. 269.

It will lie to compel a refund from the county treasurer before the tax has been turned over to the state treasury.

Matter of Park, 8 Misc. 550; 29 Supp. 1081.

But if the county treasurer has turned over the fund recourse must be had against the comptroller.

Matter of Howard, 54 Hun 305; 7 Supp. 594.

Matter of Hall, 54 Hun 637; 7 Supp. 595.

Mandamus lies to compel the surrogate to appoint an appraiser:

“Of course before acting on his own motion, the surrogate must determine whether the facts within his official knowledge are such as to require action, and before acting upon the application of an interested party he must determine whether a proper application has been made, but his duty to act is just as imperative in either case as is the duty of local assessors to obey the command of the statute respecting the performance of their duty, and there is no

more reason for saying that he has a discretion in the matter than there is for saying that any officer charged with the performance of a public duty has a discretion whether he will discharge such duty."

Kelsey v. Church, 112 App. Div. 408; 98 Supp. 535.

Mandamus will lie to compel the comptroller to issue a receipt where the tax has been paid. Upon a petition for writ of mandate to compel the state comptroller to countersign receipt for inheritance tax, the court held that the law contemplates the payment of the tax by any legatee or heir of the amount due from him, so that he may presently come into possession of his legacy or inheritance, and the receipt attesting its payment should be countersigned by the comptroller, and should be allowed in the executor's account. The comptroller has no judicial discretion by which he may exercise the right to refuse to countersign a receipt as directed by the statute. "In countersigning the receipt the comptroller decides nothing, nor should the receipt be so framed as to bind the state, or to conclude its right to have the question reviewed on appeal should the state desire to appeal from the action of the court." A writ of mandate lies in proper cases to compel the comptroller to countersign the receipt for the inheritance tax.

Becker v. Nye, 8 Cal. Dec. 129.

b. WHEN WRIT REFUSED.

But if there is a dispute as to the amount of tax due and a receipt has been given "on account" mandamus will not be granted.

People ex rel. Lown v. Cook, 158 App. Div. 74; 142 Supp. 692; aff. 209 N. Y. 578.

Nor will the writ be allowed where the tax has been paid in another estate and must be refunded to the executors of that estate.

People ex rel. Ripley v. Williams, 69 Misc. 402; 127 Supp. 749.

Mandamus does not lie to compel a court to enter a final decree without payment of the tax.

Strauss v. Costello, 29 N. Dak. 215; 150 N. W. 874.

The court said at page 222:

“ But it is contended by the appellant that the County Court refused to act and that the writ will lie to compel action. We do not so construe the attitude of the judge of the County Court. He did act. He took jurisdiction of the application for the granting and entry of a decree of final distribution and acted thereon, holding that the petitioner had not shown facts entitling him to such a decree. If the judge was in error, it constituted an erroneous decision on an application of which he had taken cognizance and was an error in judgment reviewable on appeal; and was not a refusal to take jurisdiction or to act. Mandamus does not lie to correct errors of law occurring in course of proceedings in the inferior court. Having assumed jurisdiction, the only function the writ could serve, if issued, would be to direct the judge of the County Court what character of judgment to enter. This is seldom, if ever, proper.”

Mandamus does not lie to compel comptroller to accept the nomination of an appraiser by the surrogate under the New York statute.

Duell v. Glynn, 191 N. Y. 357; 84 N. E. 282.

Where there is a right of appeal given from the order a superior court will not restrain the action of a lower court in fixing an inheritance tax.

Cross v. Superior Court, 2 Cal. App. 342; 83 Pac. 815.

4. Proceedings to Collect Delinquent Taxes.

Such proceedings cannot be entertained if commenced before the expiration of the eighteen months allowed by the New York statute for payment without interest.

Frazer v. People, 6 Dem. 174; 3 Supp. 134.

But notice to the comptroller of a proposed decree which does not provide for the payment of any transfer tax does not bar a subsequent proceeding to collect it.

Matter of Pearsall, 149 Supp. 36.

An affidavit merely alleging the opinion of the comptroller or district attorney that a tax is due and not paid is insufficient. It must disclose all the material facts.

Matter of McCarthy, 5 Misc. 276; 25 Supp. 987.

Error in fixing tax on some other basis than market value must be corrected by appeal; it cannot be availed of, in a collateral proceeding to collect the tax, as a defence.

Hanberg v. Morgan, 263 Ill. 616; 105 N. E. 720.

The decree fixing the tax is final and conclusive on the defendant in a proceeding to collect it, where no appeal was taken.

Matter of Hackett, 14 Misc. 282; 35 Supp. 1051.

Attorney-General v. Skehill, 217 Mass. 364; 104 N. E. 748.

The only remedy is a motion to modify the decree.

Matter of Clarkson, 149 Supp. 32.

5. Personal Liability of Executor.

Failure to deduct the tax before delivery of the legacy makes the executor personally liable.

Matter of Weed, 10 Misc. 628; 32 Supp. 777.

“ It is the duty of the personal representative in every case where a tax is due under this act, before paying over any legacy or distributive share, to exact from the person who is to receive it, or to retain in his hands out of the legacy or distributive share, a sum sufficient to pay the tax. If he does not he runs the risk of paying it out of his own property.”

Hunter v. Husted, 45 N. C. 141.

When the failure to pay is due to his own misconduct he is personally liable.

Hopkins' Appeal, 77 Conn. 644; 60 A. 657.

Testamentary trustees knew of a deed by testator conveying away property but failed to disclose it and permitted an inheritance tax to be assessed against the whole estate — held personally liable to cestui que trust.

Lorenz v. Weller, 267 Ill. 230; 108 N. E. 306.

Where executrix resigns without paying tax the court can appoint an administrator de bonis non to collect it.

Chamberlain v. Stecher, 78 Ohio St. 271; 85 N. E. 526.

An executor cannot be held personally liable for tax on property without the state which never comes into his possession, but must be included in his inventory.

Gallup's Appeal, 76 Conn. 617; 57 A. 699.

Matter of Kubler, N. Y. L. J., Aug. 6, 1915.

The executor should not be charged with five per cent. interest upon the amount of the transfer tax upon the estate upon the ground that he should have had the tax assessed and paid within six months after the death of the testator, where the testator died October 10, 1896, and probate was issued February 3, 1897, and the tax was assessed May 27, 1897.

In re Sudds, 32 Misc. 182; 66 Supp. 231.

In *Matter of Alfred W. Kubler*, N. Y. Law Journal, August 6, 1915, Surrogate Cohalan held: "This is an appeal by the executors from the transfer tax appraiser's report and the order entered thereon, upon the ground that these do not each contain a provision exempting the executors from such liability as arises, with which they would be chargeable for the payment of the transfer tax upon that portion of decedent's estate amounting to \$29,326.48, which at the time of his death and still is

situated at Basel, Switzerland, and which will be administered in that country. Neither the executors nor this court appear to have any control over the disposition of this money (*Matter of Dingman*, 66 App. Div. 228; 72 Supp. 694; *Matter of Marshing*, N. Y. Law Journal, March 6, 1907). The appeal is sustained and the executors relieved from liability for tax on the transfer of the said portion of decedent's estate situated in Basel, Switzerland. The order fixing tax will be modified in accordance with the terms of this decision."

Where, after a hearing upon proper notice to all parties interested, it is adjudged that an executor has been unable to collect the moneys for the payment of a tax imposed under the Transfer Tax Law from the transferred property, through the destruction of the property or obliteration of its value during the process of administration without fault or delinquency upon his part, the executor is not personally liable for the tax, and the provisions of this section with reference to his final accounting are not applicable.

Matter of Meyer, 209 N. Y. 386.

The mere fact that the beneficiaries are residents within the jurisdiction is not enough on which to predicate jurisdiction to assess the tax where neither the decedent nor the property are situated within the state.

State v. Brim, 27 N. C. 300.

State v. Brevard, 62 N. C. 141.

Where the executrix has paid a tax to the federal government which was not a proper charge against the estate, this should not be surcharged against the executrix where it is admitted that the sum may be recovered back.

Matter of Marx, 117 App. Div. 890; 103 Supp. 446.

Personal liability extends to the beneficiaries who have received the property.

Matter of McGee, N. Y. L. J., Feb. 7, 1913; aff. 160 App. Div. 890; 144 Supp. 1127.

Succession of Pargoud, 13 La. Ann. 267.

Wilhelmi v. Wade, 65 Mo. 39.

Matter of Gihon, 169 N. Y. 443; 62 N. E. 561.

Matter of Thomson, 12 Phila. (Pa.) 36.

In re Lotzgesell, 62 Wash. 352; 113 Pac. 1105.

United States v. Tappan, Fed. Cas. 16,431.

United States v. Trucks, 27 Fed. 541.

United States v. Kelly, 27 Fed. 542.

Montague v. State, 74 Md. 481, 487.

Personal liability cannot extend to foreign executor.

Goodrich v. Roch. Trust & S. D. Co., 173 App. Div. 577; 160 Supp. 454.

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PART VI—THE STATUTES

A.—GENERAL REVIEW OF THE STATE STATUTES

The Federal Government and all the states of the Union except Alabama, Florida, South Carolina, Mississippi and New Mexico now impose inheritance taxes.

In the last four years 36 states have passed new inheritance tax statutes or radically amended those existing out of 44 imposing such taxes, as follows:

Arizona, 1912, first statute taxing inheritances.

Arkansas, 1913, 1915, 1917, amendments.

California, 1913, 1915, amendments, 1917, new statute.

Colorado, 1913, amendments.

Connecticut, 1915, new statute, 1917, amendments.

Delaware, 1917, first direct inheritance tax imposed.

Georgia, 1913, first statute taxing inheritances.

Illinois, 1913, 1917, amendments.

Indiana, 1913, first statute, amended 1917.

Kansas, 1915, new statute, amended 1917.

Louisiana, 1912, amendments.

Maine, 1913, 1917, amendments.

Massachusetts, 1912, amendments.

Michigan, 1913, 1915, amendments.

Missouri, 1917, new statute first taxing direct inheritances.

Nebraska, 1913, new statute, amended 1915.

Nevada, 1913, first statute taxing inheritances.

New Hampshire, 1913, 1915, amendments.

New Jersey, 1914, amendments.

New York, 1915, 1916, 1917, amendments.

North Carolina, 1913, 1915, 1917, amendments.

North Dakota, 1917, new statute.
Ohio, 1913, amendments.
Oklahoma, 1915, new statute.
Oregon, 1915, 1917, amendments.
Pennsylvania, 1917, first statute taxing direct inheritances.
Rhode Island, 1916, first statute taxing inheritances.
South Dakota, 1913, new statute, amended 1915.
Tennessee, 1915, amendments.
Texas, 1917, amendments.
Utah, 1915, 1917, amendments.
Vermont, 1917, first direct inheritance tax.
Virginia, 1916, first direct inheritance tax.
Washington, 1917, amendments.
West Virginia, 1913, amendments.
Wisconsin, 1913, 1917, amendments.
United States, 1916, new statute, amended 1917.

The changes in nearly all the states in the last four years make the law difficult to ascertain, as no attempt has been made to collect and publish the statutes since 1913. The general trend has been to increase the rates and reduce the exemptions. In the western states more stringent efforts have been made to reach the property of non-residents within their jurisdiction, while those in the east have generally endeavored to avoid double taxation and exempt the personal property of nonresidents within the state.

1. Wherein They Agree.

While the various statutes differ widely as to rates, exemptions and the policy of taxing the personal property of nonresidents they are all built on the same general plan and are largely copied one from the other with only minor differences of procedure.

a. TRANSFERS BY WILL AND INTESTACY.

The statutes all tax transfers by will or intestacy and all but Rhode Island, Utah, and the United States confine the tax to the amount passing at death to each beneficiary, the tax being on the right to receive. Rhode Island taxes both the entire estate for the right of the decedent to transfer it and the share of each beneficiary for the right to receive it. The Federal statute and that of Utah tax the entire net estate of the decedent for the right to transfer it to the living successors.

b. TRANSFERS IN AVOIDANCE.

With the exception of Virginia all the statutes tax transfers by deed, grant, sale or gift made "in contemplation of death or intended to take effect in possession or enjoyment at or after death."

California, Colorado, Delaware, Georgia, Kansas, Maine, Massachusetts, Nevada, Rhode Island, Vermont, Wisconsin and the Federal Act add the provision that such transfers must be made without "adequate" consideration or "fair consideration by a bona fide purchaser in money or money's worth."

This amendment is construed rather to clarify and explain than alter the law.

Estate of Reynolds, 169 Cal. 600; 147 Pac. 268.

When a transfer is made without such consideration within one year of death it is deemed to be in contemplation thereof by the statute of Colorado. When so made within two years, by the Federal statute and Indiana, and when so made within six years by the statute of Wisconsin. In Missouri the transfer is deemed to be "in contemplation" when made without valuable and adequate consideration" and in North Dakota when so made within six years. The other states leave the question to the courts.

c. COMMON LAW TRANSFERS.

1. *Joint estates*: After much litigation the courts inclined to the view that the succession of one joint tenant to the whole estate on the death of the other was not a transfer taxable under the statutes. Such transfers are now specifically taxed in New York, California and by the Federal Act by declaring successions to the sole estate by joint tenants a taxable transfer.

2. *Dower, Curtesy, Community Property*: Most of the statutes now tax a husband's succession to curtesy and to his wife's personalty under common law right. With the exception of Illinois the statutes all exempt dower. Until 1917 California taxed a widow's community succession but now exempts it as does Louisiana; but the Federal statute taxes it.

d. POWERS OF APPOINTMENT.

Successions under powers of appointment have been the source of much legislative concern and have been fruitful of litigation. They continually present problems as to whether the succession is under the will or deed creating the power or under the exercise of the power by its donee and what happens when the power is not exercised. These methods are followed:

1. California (prior to 1917) and New Jersey tax the succession under such powers to the estate of the creator of the power.

2. Arkansas, Indiana, New York, Oklahoma and West Virginia tax the exercise of the power as though the property in fact belonged to the donee thereof, but are silent as to the nonexercise of the power.

3. California (statute 1917), Colorado, Connecticut, Idaho, Illinois, Massachusetts, Minnesota, Rhode Island, South Dakota and Wisconsin tax the exercise of the power and also tax the succession on failure to exercise it as

though it has been the property of the donee and not of the creator of the power.

The other states and Federal Act leave transfers by powers of appointment to judicial construction.

e. LIFE ESTATES.

All the statutes provide for the immediate valuation of life estates and remainders and under the statutes or the practice of the courts this is universally done by the use of the various mortality tables at the prescribed rate of interest. As to these, the states widely differ and the whole subject is reviewed *ante* under Life Estates and Remainders.

f. REMAINDERS.

The states differ as to whether the tax on the remainder shall be collected at once or postponed until the beneficiary gets the property. In case of contingent remainders where the amount of the property itself is uncertain, as in case of life estates with power to invade the principal, the taxation of the remainder is usually suspended unless the tax is compounded by a settlement agreement which nearly all the statutes permit in such cases.

Eight states make the tax on all remainders due at once: Arkansas, Delaware, Georgia, Maryland, Maine, New Hampshire, Ohio and West Virginia, though the practice is to suspend the tax where the amount is uncertain.

These states postpone contingent remainder taxation until the beneficiary becomes entitled to the property, usually providing that security must be given in case of personal property: Michigan, Missouri, New Jersey, North Dakota, Oklahoma, Oregon, Pennsylvania, Tennessee, Utah and Washington.

The usual practice is to give the remainderman of personal property an election not to pay the tax until he

receives the property provided he files a bond to pay the tax with interest with an inventory of the property and renews the bond every five (5) years. This is the law in Arizona, California, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan Montana, Missouri, Nevada, New Jersey, Oklahoma, Oregon, Pennsylvania, Rhode Island, Wisconsin, Wyoming. Some of these states extend this to real estate, others let the tax remain a lien during the life tenure.

In case of contingent remainders these states assess the tax at the highest possible rate with provision for a refund if a lower rate turns out to be due: California, Colorado, Idaho, Illinois, Indiana, New York, Minnesota, and South Dakota. The provision has been the source of much litigation.

Rhode Island and Wisconsin on the other hand tax the contingent remainder at the lowest possible rate and require adjustment if a higher rate is ultimately due.

Connecticut makes the contingent remainder rate the same as that of the life tenant with provision for ultimate adjustment of any difference on the falling in of the remainder.

In all the states the general principle is the same, the variations being as to when the tax falls due and the rate at which it is imposed.

g. EXECUTORS AND THEIR DUTIES.

All the statutes require the executor or administrator to file a sworn inventory which is made the basis for the appraisal of the estate and the assessment of the tax. They all hold him personally liable for the tax. They all require him to deduct the tax from a money legacy or collect it from the beneficiary, if in property, and forbid him to deliver it until the tax is paid. They all make the tax a lien and provide that the property, or so much

thereof as is necessary, may be sold to pay the tax as in case of debts. They all require him to pay the tax to the proper official and secure a receipt which must be produced as a voucher on final accounting. They all provide that no final decree settling his accounts may be granted until it is shown that the tax has been paid or that none is due. Bequests to executors in lieu of commissions are universally taxed where they exceed a reasonable compensation for services.

h. APPRAISAL.

All of the statutes use the machinery of the probate courts for the collection of the tax and most of them require the judge or surrogate having jurisdiction to grant letters testamentary or of administration to assess it on appraisal. Some states permit the sworn inventory to stand as the appraisal unless the treasurer, comptroller or tax commissioner is dissatisfied; but provide for the appointment of an appraiser if there is any question in dispute who proceeds, upon due notice to all parties interested, to appraise the estate at its fair market value, usually the value at the death of the decedent. From the appraisal so made there is always an appeal to the probate court which may order a reappraisal or assess the tax and from such decree an appeal lies in the same manner as from other decrees unless special provisions are made as to time, etc. In all these features the statutes are practically identical.

Provisions are also usually made for motions to exempt an estate which is obviously not taxable without the formality of an appraisal.

i. VALUATION.

The time when the tax falls due is the time when the value must be fixed but losses in process of administration

have so often occurred and beneficiaries so frequently have been assessed upon the transfer for the property they never in fact have received that the recent statutes enacted by Connecticut, Rhode Island and the Federal government allow a deduction for losses during administration except those due merely to the rise and fall in the price of stocks. This is a relief which the courts cannot give and will doubtless be generally adopted in other states.

j. INTEREST, DISCOUNT AND PENALTY.

Following is a synopsis of the provisions of the statutes with regard to rates of interest and discount:

Federal tax—due one year after death. If not paid within 90 days after that 10 per cent. interest from date of death which may be reduced to 6 per cent. in case of unavoidable delay. If paid before due discount of 5 per cent. per annum calculated from date of payment to date when due.

Arizona.—Due at death, after 8 months interest at 8 per cent. from death, in case of unavoidable delay, 6 per cent. If paid within 8 months, 5 per cent. discount.

Arkansas.—Due at death, interest at 6 per cent. after 6 months, after 12 months 10 per cent. penalty in addition to interest, except in case of unavoidable delay when penalty is remitted—no discount.

California.—Due at death, no interest until 18 months, after that 10 per cent. from date of death, in case of unavoidable delay may be reduced to 7 per cent. If paid within 6 months 5 per cent. discount.

Colorado.—Due at death, after one year interest at 10 per cent. from date of death, discount of 5 per cent. if paid within 6 months.

Connecticut.—Due 14 months after death; after that interest at 9 per cent. but court may extend time of payment. No discount.

Delaware.—Taxes payable within 13 months. No provision for interest. Legal rate is 6 per cent. No discount.

Georgia.—Due at death, no interest until after 12 months then from date of death. No rate specified. Legal rate 7 per cent.

Hawaii.—Due at death. No interest for 18 months; after that 10 per cent. from date of death which may be reduced to 7 per cent. in case of unavoidable delay. Discount of 5 per cent. if paid within one year.

Idaho.—Due at death. No interest until after one year; then 10 per cent. reduced to 6 per cent. in case of unavoidable delay. Discount of 5 per cent. if paid within six months.

Illinois.—Taxes due at death and interest at 6 per cent. charged from that time unless paid within 6 months when no interest charged and a discount of 5 per cent. allowed.

Indiana.—Tax due at death. No interest for 18 months; after that 10 per cent. from date of death, discount of 15 per cent. if paid within one year.

Iowa.—At death, no interest for 18 months; after that 8 per cent. from date of death.

Kansas.—One year from death except gifts in contemplation of death on which tax accrues at date of gift. No provision as to interest. Legal rate is 6 per cent.

Kentucky.—Due at death. No interest for 18 months, after that 10 per cent. from date of death; may be reduced to 6 per cent. in case of unavoidable delay. Discount of 5 per cent. if paid within 9 months.

Louisiana.—Due 6 months after death from which time 2 per cent. a month until paid but court may remit interest in case of litigation or unavoidable delay. No discount.

Maine.—Due two years after death, after that 6 per cent. interest. No discount.

Maryland.—No interest until after 12 months, then 6 per cent. from date of death. No discount.

Massachusetts.—Due within one year after the executor or administrator qualifies; after that interest is charged. Rate not specified. Legal rate 5 per cent. No discount.

Michigan.—Due at death, no interest for 18 months; after that 8 per cent., may be reduced to 6 per cent. in case of unavoidable delay. Discount of 5 per cent. if paid within one year.

Minnesota.—Due at death, no interest charged for one year, after that 7 per cent. from date of death, may be reduced to 6 per cent. in case of unavoidable delay. No discount.

Missouri.—Due at death. No interest for six months, after than 6 per cent. from date of death. If not paid within one year executor must file a bond. No discount.

Montana.—Due at death. No interest for 10 months, after than 10 per cent., reduced to 7 per cent from 18 months after death in case of unavoidable delay. If paid within 6 months discount of 3 per cent.

Nebraska.—Due at death with interest at 7 per cent., but if paid within one year interest rebated. No discount.

Nevada.—Due at death, no interest until after 18 months, then 10 per cent. from date of death unless unavoidable delay, then 7 per cent. If paid within 6 months, discount of 5 per cent.

New Hampshire.—Due two years after executor or administrator qualifies by giving bonds. No interest until then, after that 10 per cent. No discount.

New Jersey.—Due at death, no interest for one year, after that 10 per cent. from end of year which may be reduced to 6 per cent. in case of unavoidable delay. If paid within 6 months 5 per cent. discount.

New York.—Due at date of transfer. No interest for 18 months, after that 10 per cent., which may be reduced to 6 per cent. in case of unavoidable delay. Discount of 5 per cent. if paid within 6 months.

North Carolina.—Due at death, no interest for one year, after that 6 per cent. for one year and after two years 10 per cent. and $2\frac{1}{2}$ per cent. additional for sheriff's fees. If paid within six months a discount of $2\frac{1}{2}$ per cent. allowed.

North Dakota.—Due at death, no interest for one year, after that 10 per cent. from date of accrual, which may be reduced to 6 per cent. in case of unavoidable delay, until cause of delay is removed, then 10 per cent. No discount.

Ohio.—Due at death. No interest for one year. After that 8 per cent. Discount of one per cent. for each full month the payment anticipates the lapse of one year.

Oklahoma.—Due at death. Except contingent remainders which are due when beneficiaries get property. Ten per cent. interest charged from date when due. No discount.

Oregon.—Due at death. No interest for 8 months, then 8 per cent. from death, which may be reduced to 6 per cent. in case of unavoidable delay. If paid within 8 months discount of 5 per cent.

Pennsylvania.—Due at death. No interest for one year, after that 12 per cent., which may be reduced to 6 per cent. in case of unavoidable delay. Discount of 5 per cent. if paid within 3 months.

Rhode Island.—Due 6 months after executor or administrator has filed his bond. After 9 months interest charged at 8 per cent. which may be reduced to 6 per cent. in case of unavoidable delay. Discount of 4 per cent. if paid within the 6 months.

South Dakota.—Due at death, payable as soon as determined. No interest until one year from death, then 7 per cent. from date of death, which may be reduced to 6 per cent. in case of unavoidable delay. No discount.

Tennessee.—Due one year after death. No interest until then, after that 6 per cent. If paid within 3 months after death discount of 5 per cent.

Texas.— Due at death with interest from that date unless paid within 6 months when interest is rebated. No rate prescribed but legal rate is 6 per cent. No discount.

Utah.— Due at death but no interest for 15 months, after that 8 per cent. but time may be extended by court or in case of nonresidents by attorney general.

Vermont.— Due two years after death. No rate prescribed for interest after that. Legal rate is 6 per cent.

Virginia.— Executor or administrator must pay 10 per cent. interest if he deliver share or legacy without paying the tax and property deemed delivered within one year unless shown that legatee has neither received the property nor is entitled to demand it. No discount.

Washington.— Due at death. No interest for 15 months. After 15 months 8 per cent. except in case of unavoidable delay when 8 per cent. is charged only after cause of delay has been removed. No discount.

West Virginia.— Due on assessment. After that interest at 4 per cent. No discount.

Wisconsin.— Due at death. No interest for 18 months; after that 10 per cent. from date of death which may be reduced to 6 per cent. in case of unavoidable delay. If paid within one year discount of 5 per cent.

Wyoming.— Due at death. Interest at 6 per cent. after 6 months from date of death. If paid before 6 months discount of 5 per cent.

All of the statutes make provision for the collection of delinquent taxes by the attorney general or district attorney.

K. BANKS AND TRUST COMPANIES.

Most of the states make stringent regulations as to the disclosure by banks and trust companies of assets belonging to decedents. They are generally required to notify the state treasurer or comptroller ten days before delivering any property to an executor or administrator

and they are sometimes required to hold enough of the assets in their hands to pay the tax. The bank or trust company violating these provisions is penalized and held liable for the tax. Some of the states extend this provision to all corporations within the state, making them liable for the tax if they transfer stock of nonresident decedents on their books without notifying the taxing officer.

1. THE INTEREST TAXED.

The early statutes imposed inheritance taxes upon the entire estate of the decedent; but all the states but Utah now impose the tax upon the share of each beneficiary. Rhode Island, in its statute of 1916, which is in many respects a model law, imposes two taxes,—first a tax of one-half of one per cent. upon the entire estate “for the right to transfer” and second graded taxes upon the beneficial shares “for the right to receive.”

2. Wherein They Differ.

As we have seen the general plan of the statutes is identical and the procedure for assessment and collection varies more in detail than in essentials. In the matter of rates and exemptions and in the policy adopted as to transfers by non-resident decedents the divergencies are radical. In the matter of non-residents the conflicting theories and conflicting statutes often impose oppressive double taxation on the one hand, while, on the other, large estates frequently escape the tax altogether.

a. COLLATERALS AND STRANGERS ONLY.

The early statutes in all the states taxed only transfers to collaterals and strangers. The following states still preserve this policy and impose no tax on a transfer to direct heirs. Iowa, Kansas, Kentucky, Maryland, Ohio, and Texas.

The other states all tax transfers to direct heirs and grade the rates according to degrees of relationship. The bequests to collaterals and strangers are universally taxed at a higher rate than the others.

b. NON-RESIDENT DECEDENTS.

Thirty states tax transfers of all property within the state by non-resident decedents.

Michigan and Montana tax all but real estate of non-residents.

Massachusetts, New Hampshire, Rhode Island, and Vermont tax the real estate only.

Arkansas, Connecticut, Indiana, New York, New Jersey, Pennsylvania, and Oklahoma attempt to distinguish between "tangible" and "intangible" property and tax only the tangibles of non-residents.

c. TANGIBLES AND INTANGIBLES.

Pennsylvania arrives at this result by legal construction, its courts holding that the movables of non-residents "follow the domicile of their owner" but that "tangible" assets have a situs within the state apart from their owner.

New York in 1911 enacted the Pennsylvania doctrine into law upon the theory that the other states would follow its lead; but only a few have done so and New York meanwhile is drifting away from the legal results of the theory. By subsequent amendments it now taxes stock of non-resident corporations owning real estate in New York, as it was found that large non-resident real property owners were incorporating their holdings. The whole of a non-resident interest in a co-partnership is now taxed and an attempt has been made to define a resident as a person who stays in the state a few months each year. This has just met with failure before a New York surrogate in the case of the estate of the late Hettie

Green whose domicile was in Vermont which taxed only collateral bequests — her entire estate thus escaping the tax if the decision is sustained. It is instances like this that lead to the other extreme of double taxation.

Arkansas, New Jersey, and Oklahoma, while ostensibly accepting the doctrine of "tangibles" define them to include stock in domestic corporations owning tangibles within the state which practically defines away the definition.

d. RECIPROCAL STATUTES.

The plan of attempting to control the policy of sister states by offering rewards or penalizing its inhabitants has been tried in Connecticut and Massachusetts, but those states have abandoned the idea. Massachusetts however exempts property of her own resident decedents when it is taxed in another state, unless the tax is less than that of Massachusetts, when the beneficiary must pay the difference. In this she has been followed by West Virginia. This would seem to be a step toward the only possible solution.

Maine exempted transfers of personal property within that state by non-resident decedents who were domiciled in states that do not tax similar transfers by residents of Maine, but this provision was repealed by Ch. 266, L. 1917.

North Dakota and Wisconsin exempt tangible property of their own residents located in another state if that state makes a like exemption to its own residents as to tangibles in North Dakota and Wisconsin. Whether these provisions are sufficiently reciprocal with those of Maine, Massachusetts and West Virginia has not yet been determined and the question might prove a source of interesting litigation.

Reciprocal provisions have proved a failure or have not been adopted by a sufficient number of states to be useful.

e. DOUBLE TAXATION.

Three-fourths of all the states now tax property of non-residents transferred within the state and the trend of the new statutes has been in that direction, particularly in the western states. This confessedly results in double taxation; but the other theory permits large estates to escape without paying any tax. Three-fourths of the states having abolished the legal fiction that movables follow the person as to non-residents; it remains for each state to follow the example of Massachusetts and West Virginia and relieve its own inhabitants from double taxation by exempting them when they have paid inheritance taxes in another state of an equal or greater amount.

If all personal property is taxed at its physical situs upon transfer by a decedent, double taxation would be avoided and but few estates could escape it scot free.

3. As Producers of Revenue.

The only legitimate object of taxation is to produce revenue and generally its purpose is to produce as much revenue as possible with the least inconvenience and burden to the community. The prime factors governing the amount of revenue to be derived from inheritance taxes are the rates of tax and exemptions.

a. THE RATE.

Generally the rate is small to near relatives and higher as to collaterals and strangers and increases in proportion to the amount of the bequest or distributive share. The tax on transfers to collaterals and strangers in some states runs as high as 30% on amounts in excess of one million and usually to 15%.

While this is picturesque and typifies the popular notion that the government can be maintained by sharing in bonanzas to remote relatives this touch of romance in the tax statutes fails to produce much revenue.

A tax of five per cent. on all bequests or shares in excess of \$100,000 and graded down from that point will produce a large and steady income to the state, while excessive rates on mythical millions only bring cash into the treasury on the advent of an earthquake or a Titanic disaster.

b. EXEMPTIONS.

The tendency has been to increase the number and amount of exemptions. This has also tended to make the tax a failure as a producer of revenue.

In this connection the following excerpt from the report of Comptroller Travis of New York for 1915 is significant:

The net receipts from inheritance taxes for the fiscal year ended September 30, 1914, was \$11,162,478.40.

There were 8,947 reports of appraisal examined and filed and 11,608 orders received from the surrogates' courts of the several counties of this state.

The small percentage of estates subject to the graded rates of tax, as shown by the appraisals for the past two years, justifies me in calling to your attention the necessity of reducing both the exemptions allowed on individual transfers, as well as the several limitations beyond which the next higher rate of tax becomes effective, if the state is to receive annually from this source of revenue the amount of tax that the present statute was expected to produce.

From 1892 till July 11, 1910, individual transferees were not allowed an exemption of any amount whatsoever if the whole estate exceeded \$10,000 and passed to those in the one per cent. class, or exceeded \$500 and some part thereof passed to persons in the five per cent. class.

By the amendment of 1910 a father, mother, widow or minor child was given an exemption of \$5,000. The other

persons in the one per cent. class were allowed an exemption of \$500, and those in the five per cent. class an exemption of \$100.

Under the present statute (Chapter 732, Laws of 1911) each person in the one per cent. class is given an exemption of \$5,000, and those in the five per cent. class are given an exemption of \$1,000.

Owing to the present large exemptions almost every estate between \$10,000 and \$30,000 where the property passes to those in the one per cent. class is wholly exempt. This amendment eliminates from twenty-five to forty per cent. of the estates in most of the counties of the state which under the old law would have been taxable.

The statute still recognizes two classes of taxable persons. Persons related to the decedent as a father, mother, brother, sister, wife or widow of a son or the husband of a daughter, lineal descendants, etc., are referred to as the one per cent. class, while transfers to more remote relatives, such as uncle, aunt, nephew, niece, cousin, or to persons unrelated, are referred to as the five per cent. class.

The present limitations of \$50,000, \$250,000 and \$1,000,000 upon which the corresponding progressive rate per cent. is computed are purely arbitrary amounts placed in the statute without the knowledge since gained that in almost every million dollar estate the individual transfer seldom reaches the maximum of the present two per cent. rate.

The amendments to the statute in 1916 by the New York legislature were adopted in view of the fact that the receipts had fallen from thirteen millions in 1913 to seven millions in 1916, nearly 50 per cent. The effect of the amendment is already beginning to be felt in increased revenue. The proceeds for 1917 were \$13,791,000 under the 1916 amendment.

c. FACTS AS TO REVENUE.

The revenue in 1913 produced by the inheritance tax statutes of the several states which then imposed such taxes is shown by the following table:

TABLE SHOWING INHERITANCE TAX RECEIPTS IN STATES
LEVYING SUCH TAXES IN 1913.

Arkansas	\$23,665
California	1,586,875
Colorado	224,406
Connecticut	1,080,483
Delaware	8,381
Idaho	5,036
Illinois	1,612,818
Iowa	280,733
Kansas	170,234
Kentucky	99,224
Louisiana	207,004
Maine	275,318
Maryland	289,332
Massachusetts	2,154,407
Michigan	360,898
Minnesota	678,455
Missouri	479,517
Montana	8,959
*Nebraska	100,000
New Hampshire	173,415
New Jersey	748,086
New York	12,153,189
North Carolina	5,265
Oklahoma	4,865
Ohio	225,507
Oregon	74,269
Pennsylvania	2,064,300
South Dakota	9,781
Tennessee	210,381
Texas	47,574
Utah	242,800
Vermont	78,593
Virginia	43,392
Washington	186,231
West Virginia	168,234
Wisconsin	924,736
Wyoming	361
Total	<u>\$27,006,697</u>

* Estimated.

California, Connecticut, Illinois, Massachusetts and Pennsylvania collected a total of \$8,498,883.

Wisconsin, Minnesota, New Jersey, Missouri, and Michigan a total of \$3,191,692, making \$11,690,575 for the ten states while New York collected \$12,153,189.

The total collections in all the other states totaled only \$3,162,933.

Under increased rates California jumped from \$1,586,000 in 1913 to \$2,783,000 in 1915 and now collects over \$3,000,000. Wisconsin, also, has about doubled her receipts.

But while these amendments have increased the rates and made the penalties more severe little has been done to make the collection of the tax more efficient. Few of the states make any appropriation for the expenses of collection or provide the collecting officers with adequate legal assistance. The result is as should be expected. Every estate of taxable proportions has astute and vigilant attorneys employed to minimize the tax or evade it if possible. Several of the states have in the last year amended their statutes to authorize the employment of one special transfer tax attorney. New York has over one hundred attorneys so employed, and such states as California, Wisconsin and Illinois where a comparatively large revenue is secured are following her example, with the result that the increased revenue is out of all proportion to the extra cost.

As a producer of revenue inheritance taxation is still in the state of experiment. Its purpose too often seems to be to punish the "idle rich" and goad them into evasion and tax dodging rather than to take even ordinary precautions to make the collection of the tax sure.

Moderate rates and efficient provisions for collection would seem to be the recommendation of experience.

An abstract of all the state statutes with the important sections in full and the rest carefully digested is given in the Appendix.

B.— THE FEDERAL STATUTE

1. History and Development.

Inheritance taxes have been imposed by the United States government only under pressure of emergency caused by war, and have been repealed as soon as that pressure was removed, on the theory that such taxes were primarily a source of revenue tacitly reserved to the state governments for their support. Four times in its history, war conditions have produced such taxes. They may be known as the Revolutionary war tax, enacted in 1797 and repealed in 1802; the Civil war tax, enacted in 1862 and repealed in 1870; the Spanish war tax, enacted in 1898 and repealed in 1902; and the present German war tax enacted September 8, 1916, and amended March 3, 1917.

a. THE REVOLUTIONARY WAR TAX.

This was enacted July 6, 1797, as a stamp duty, the stamps being affixed to receipts given by the legatee to the executor — Chap. 11, 1 Stat. 527. The statute closely followed the legacy duty imposed in the mother country. It was paid by the legatee and not out of the estate. The act was repealed as soon as the country somewhat recovered from the war debt pressure, the repealing act being Chapter 17, 2 Stat. 148, June 30, 1802.

It had none of the features of the more recent inheritance tax statutes and was strictly speaking more to be classed as a duty or impost than a tax. It imposed a fee of 25 cents on legacies from \$50 to \$100; 50 cents on legacies from \$100 to \$500; and \$1.00 additional for every additional \$500.

b. THE CIVIL WAR TAX.

For sixty years the Federal government ignored this source of revenue but was once more driven to it by the conditions in 1862. By Chapter 119, 12 Stat. 433, 485, another inheritance tax was imposed.

This was also a legacy and probate stamp tax, closely following an English model of that date. It involved as well as the tax on the legacy a probate tax on the entire estate.

This statute also was different in theory and in manner of collection from any of the modern inheritance tax statutes.

This tax ranged from 50 cents to \$20 on estates valued at from \$50,000 to \$100,000 and \$10 for every additional \$50,000 or part thereof.

The act was amended in 1864 and 1866 and was repealed July 14, 1870, by Chapter 255, Stat. 1870.

c. THE SPANISH WAR TAX.

This statute enacted June 13, 1898, 30 U. S. Stat. p. 464, and was amended March 2, 1901, 31 U. S. Stat. p. 946, to exempt charitable corporations and regulating procedure. It was repealed April 12, 1902, and taxes on charitable bequests collected between 1898 and 1901 were refunded by 32 U. S. Stat. p. 406.

The act was a tax on beneficiaries for the right to receive and was modeled after the pattern of many of the state statutes now in force. It taxed only personal property passing by will, intestate laws or " deed, grant, bargain, sale or gift made or intended to take effect in possession or enjoyment after the death " of the grantor, etc.

It did not tax estates valued at less than \$10,000. When they exceeded that sum a tax was levied on the whole amount at these rates.

TABLE OF RATES UNDER FEDERAL ACT OF 1898

CLASS OR RELATIONSHIP	GRADED RATES OF TAX				
	Up to 25,000	25,000 to 100,000	100,000 to 500,000	500,000 to 1,000,000	In excess of 1,000,000
	<i>Per cen</i>	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>
Lineal issue, lineal ancestor, brother or sister.....	$\frac{1}{2}$	$1\frac{1}{2}$	$1\frac{1}{2}$	$2\frac{1}{2}$	$2\frac{1}{2}$
Descendant of brother or sister.....	$1\frac{1}{2}$	$2\frac{1}{2}$	3	$3\frac{1}{2}$	$4\frac{1}{2}$
Aunt or uncle and their descendants.....	3	$4\frac{1}{2}$	6	$7\frac{1}{2}$	9
Brother or sister of grand parents and their descendants.....	4	6	8	10	12
All others except as below.....	$\frac{5}{2}$	$7\frac{1}{2}$	10	$12\frac{1}{2}$	15

Inheritances of the husband or wife were altogether exempt and by act of 1901 all charitable, religious, educational, etc., bequests were exempted.

These taxes were superimposed over and above the taxes collected by the states and it will be observed that rates which, when imposed by the states, are denounced as "confiscatory," were charged and collected.

It should be borne in mind however that under this tax real estate was exempted altogether thus reducing the size of all estates liable to the tax; and that there was no attempt to tax contingent remainders.

Vanderbilt v. Eidman, 196 U. S. 480; 25 S. Ct. 331.

Herold v. Shanley, 146 Fed. 20; 76 C. C. A. 478.

Heberton v. McClain, 135 Fed. 226.

Brown v. Kinney, 137 Fed. 1018.

2. Doubtful Constitutionality.

Pressure caused by war conditions, particularly the falling off of the taxable imports and the necessary preparations for defense, caused the Federal government once more to resort to estates as a source of revenue. By the revenue act approved September 8, 1916, the present tax was enacted and was amended March 3, 1917, by greatly increasing the rates which run up to 15 per cent. on estates in excess of five million.

The distinguishing feature of the present Federal statute is that it proceeds upon a different theory from all prior Federal inheritance taxes and from that of all but two of the states.

It levies the tax on the entire estate of the decedent without reference to the beneficiaries or their interests. It includes real estate as well as personal property in determining the value of the "net estate" subject to the tax and makes one general exemption of \$50,000 which is to be deducted from any estate before a tax is imposed as well as all debts, funeral expenses and the like, that are allowed by the laws of the state wherein the estate is administered.

It makes no exemptions to charitable, educational or religious institutions, being regarded as an "estate tax" and not a tax on the transfer to such institutions.

Another unusual feature, and one that seems to violate every constitutional principle, is that it makes no provision for notice or a hearing but, on the contrary, requires that the executor shall notify the collector instead of the collector notifying the executor! This is an anomaly in tax legislation. The obvious defect may, perhaps, be remedied by the treasury department, which is empowered to make regulations for the enforcement of the law, but thus far no such provision has been made.

The whole scheme of the law would seem to be to impose oppressive, if not confiscatory rates, on large estates, with no provision for the adjustment of burdens.

The unfortunate error of imposing oppressive taxation rather than efficient taxation must inevitably bear fruit in a mass of litigation with disappointing results in the amount of revenue derived.

It is to be regretted that the Congress did not see fit to re-enact the statute of 1898. This law had been interpreted by the courts, its constitutionality sustained, and

its practical workings tested by experience. If it failed to produce sufficient revenue the fault was in extensive exemptions and also, doubtless, in lack of efficiency in enforcement — and possibly in an exaggerated notion as to the amount of revenue to be derived from the devolution of large estates. The vast bulk of the country's wealth is in the hands of people of moderate means. No tax will produce a large revenue which does not reach the pocket-books of the masses.

It is "not an Inheritance Tax." Art. IV, Department Regulations (see *post*). That is to say the tax is on the right to transmit property from the dead, not on the right to receive it from the dead. It is, therefore, not a tax upon the succession or inheritance, but is imposed upon the estate. No provision is made for adjusting the burden of the tax among the beneficiaries.

But the right to transmit at death is not a privilege bestowed by the Federal government. It is not one of the powers delegated to Congress by the states in the National Constitution.

Matter of Becker, 26 Misc. 633; 57 Supp. 940.

If the transfer is by will a right has been exercised by the decedent and is logically taxable; but if no will is made; if the property is distributed by the intestate laws of a state; under what theory can the right to transmit be taxed? A legatee may renounce and thus escape taxation. If a decedent does not exercise the privilege of making a will it is difficult to see how any transfer tax can be imposed upon him, or his property by reason of its distribution under intestate laws with the operation of which he has no concern.

The right to transfer necessarily involves a transferee and in case of intestacy the only privilege exercised is the privilege of receiving.

Under the department's ruling the Federal "Estate

Tax " as it is termed, comes very near to being a tax on property and hence unconstitutional, not only as a property tax unequal in its burdens but because not apportioned among the states as a direct tax.

But the state courts must concern themselves with the distribution of the burdens of the tax among the beneficiaries if the tax is to be enforced. Unless the real estate is made to bear its share, unless the specific legatee pays a portion, unless the burden is adjusted between the life tenant and the remainderman, the law will operate oppressively and unconstitutionally.

Very little light can be thrown upon these problems by the decisions under the former Federal statute because that statute was a tax on the right to receive and was paid out of the share of each beneficiary.

As the tax is not due until a year after death and as the year when the first tax is due will not expire until September 8, 1917, the problems which the practical administrations of the law presents and the litigations which must grow out of it are only just arising.

Meanwhile the only light to be had is the rulings and regulations of the treasury department. These will doubtless be materially modified as their effect is appreciated.

To illustrate: The rule that a gift made in contemplation of death, though made years prior to the enactment of the Federal statute, is taxable under it, if the death occurred after its passage, is clearly unconstitutional in its construction of the statute. A gift *inter vivos*, passing title, vests in interest and possession; and no subsequent statute can tax a transfer that has already taken place.

Matter of Travis, 19 Misc. 393; 44 Supp. 349.

Matter of Pell, 171 N. Y. 48; 63 N. E. 789.

Matter of McKelway, 221 N. Y. 15; 116 N. E. 348.

The apportionment of the tax among the beneficiaries would be difficult if the law attempted it. Apparently

specific legacies will escape and the entire tax fall on the residuary estate. There is no provision for apportioning the tax between the real estate and the personal property, and apparently it is to be collected out of the personality if there is sufficient to pay it. The regulations of the treasury department thus far afford no solution, if a solution is to be had.

Even at this early date these views are not unsupported by authority. In *Matter of Bierstadt*, decided by the Appellate Division July 14, 1917, the question at issue was whether the Federal tax was to be deducted from the value of the estate subject to the tax levied by the state of New York. The attorney for the executor appellant urged that the Federal tax was not on the succession but was plainly a tax on property and therefore was a deduction. The court held that if this was so the Federal tax was *unconstitutional*! The court said:

“ Mary S. Bierstadt, deceased, left a will by which she disposed of an estate valued at upwards of two million dollars. Of this estate she disposed of upwards of one million, two hundred thousand dollars by legacies of specific sums, and gave the residue to certain named relatives. No complaint is made of the assessment of the property thus devised so far as concerns the taxability of the several transfers under the State Transfer Tax Law, except that the executors-appellants claim that the tax to be paid under the Federal Revenue Act of 1916, estimated to amount to \$57,309.58 should be deducted from the gross estate left by the testatrix, before the tax due under the laws of the State of New York is calculated. This claim is based upon the proposition that the tax provided for in the Federal Revenue Act is a tax upon the estate, as such, and not upon the transfer of the property under the will and the laws of this state of which the deceased was a resident.

“A similar claim for the deduction of the succession tax levied under the Federal War Revenue Act of 1898 was decided adversely to the claimant in *Matter of Gihon* (169 N. Y. 443), wherein it was held that the Federal Tax was not a tax upon the property transferred, but one upon the transfer itself, the amount of the tax being measured by the value of the property affected by the transfers. If therefore the tax imposed by the Act of 1916 is, like that imposed by the Act of 1898, a tax upon the transfer and not upon the property transferred the claim of the executors was rightly denied. It is argued however that the Federal Revenue Act of 1916 differs radically from the War Revenue Act of 1898, in that under the Act of 1916, the tax is imposed distinctly and unequivocally upon the property transferred, and that by no construction can it be held to be merely a tax upon the transfer of the property. Without expressing an opinion upon this construction of the Act, it will suffice to say that if it must be construed as the executors claim that it must be, it would be invalid on constitutional grounds and no tax could lawfully be collected under it (*Knowlton v. Moore*, 178 N. Y. 41; *Matter of Gihon*, *supra*). If so it would be clearly improper to deduct it from the gross estate before estimating the amount of the tax to be paid under the state law.

“So in either aspect of the law, whether it merely provided for a tax upon the transfer of the property, or provides for a tax upon the property itself which is transferred, the order appealed from is right. It is quite apparent that the executors will be confronted with serious questions which must be decided before they can safely proceed to finally distribute the estate. With those questions however we are not now concerned. All we are called upon to decide is that the executors are not entitled

to deduct from the gross estate, as an expense of administration, the estimated tax provided for in the Federal Revenue Act of 1916, before the amount of the tax under the state law is fixed.

“ The order appealed from is affirmed with \$10 costs and disbursements.

“ All concur.”

In the current number of the Trust Companies Magazine (July, 1917) Mr. Arthur W. Blakemore, a well recognized authority and one of the authors of “ Blake-more & Bankroft ” on Inheritance Taxation discusses the constitutionality of the Federal Statute as follows:

“ In the midst of a great war it would be unpatriotic to attempt to attack the constitutionality of the law. No court would sustain such an objection presumably as in time of war nothing is unconstitutional as a practical matter. But after peace is declared it is reasonable to suppose that the law may be attacked and with fair chance of success. Its outstanding feature is that it is imposed on the estate itself, instead of on the shares of each beneficiary, and at a progressive rate. This was exactly the sort of tax which Congress attempted to impose in 1898, but which the Supreme Court construed as applying to each distributive share, giving as one of its reasons the crass injustice of the other view. The court remarks:

“ “ The gross inequalities which must inevitably result from the admission of this theory are readily illustrated. Thus a person dying, and leaving an estate of \$10,500, bequeathes to a hospital \$10,000. The rate of tax would be 5 per cent. and the amount of tax \$500. Another person dies at the same time, leaves an estate of \$1,000,000, and bequeathes \$10,000 to the same institution. The rate of tax would be 12½ per cent. and the amount of the tax \$1,250. It would thus come to pass that the same person, occupying the same relation and taking in the same character two equal sums from two different persons, would

pay in the one case more than twice the tax that he would in the other.

Knowlton v. Moore, 178 U. S. 41, 76, 983; 20 Sup. St. Rep. 747.

“ The act of 1898 was sufficiently ambiguous in its terms to enable the court to avoid by construction this result. There is no possible ambiguity in this respect in the act of 1916. It is clearly and unmistakably a tax with progressive rates based on the size of the estate alone. The Supreme Court will be forced to decide squarely the validity of such a method, and judging by its past utterances the result would seem extremely doubtful. It should be borne in mind that it is commonly supposed that inheritance taxes are laid on the right to receive rather than on the right to transmit, that there is already sufficient authority in this country that a progressive rate dependent on the size of the estate is void, and that the provisions of the Federal Constitution are no weaker than those of the State Constitutions on which these decisions in the state courts are based. On the other hand, the court may take the view that Congress may, if it pleases, levy a tax on the right to transmit rather than on the right to receive, and that the matter of injustice and inequality is a legislative rather than a judicial question.

“ Another objection made to the law is that it is a direct tax on the property of the estate, and should therefore be apportioned among the several states. The language of the act is that the tax is imposed on the ‘ transfer ’ and is fixed by the value of the net estate. It should be noted, however, that this tax certainly comes nearer being a direct property tax than any other yet passed in this country. The official returns required of executors ask only for a detailed property statement like any direct tax return.”

3. Provisions in Detail.

a. THE RATES

The rates imposed by the act of 1916 upon net estates of those dying after September 8, of that year and prior to March 3, 1917, are as follows:

Up to \$50,000 — 1 per cent.....	\$500
On the next \$100,000 — 2 per cent.....	2,000
On the next \$100,000 — 3 per cent.....	3,000
On the next \$200,000 — 4 per cent.....	8,000
On the next \$550,000 — 5 per cent.....	27,500
On the next \$1,000,000 — 6 per cent.....	60,000
On the next \$1,000,000 — 7 per cent.....	70,000
On the next \$1,000,000 — 8 per cent.....	80,000
On the next \$1,000,000 — 9 per cent.....	90,000
On all amounts in excess of \$5,000,000 ten per cent.	

The rates established by the amendment of March 3, 1917 on net estates of those dying after that date are as follows:

Up to \$50,000 — 1½ per cent.....	\$750
On the next \$100,000 — 3 per cent.....	3,000
On the next \$100,000 — 4½ per cent.....	4,500
On the next \$200,000 — 6 per cent.....	12,000
On the next \$550,000 — 7½ per cent.....	41,250
On the next \$1,000,000 — 9 per cent.....	90,000
On the next \$1,000,000 — 10½ per cent.....	105,000
On the next \$1,000,000 — 12 per cent.....	120,000
On the next \$1,000,000 — 13½ per cent.....	135,000
On all amounts in excess of \$5,000,000 fifteen per cent.	

ADDITIONAL WAR TAX

Title ix of the War Revenue Act of October 3, 1917 imposes the following *in addition* to those above.

Upon the transfer of each net estate of any decedent dying after the passage of this Act: a tax equal to the following percentages of its value:

				Per cent
Net Estate	not excess of	\$50,000.....		½
Exceeds	\$50,000	not over	\$150,000.....	1
"	150,000	"	250,000.....	1½
"	250,000	"	450,000.....	2
"	450,000	"	1,000,000.....	2½
"	1,000,000	"	2,000,000.....	3
"	2,000,000	"	3,000,000.....	3½
"	3,000,000	"	4,000,000.....	4
"	4,000,000	"	5,000,000.....	4½
"	5,000,000	"	8,000,000.....	5
"	8,000,000	"	10,000,000.....	7
"	10,000,000			10

No tax shall be paid on the transfer of the net estate of any decedent dying while serving in the military or naval forces of the United States, during the continuance of the present war, or if death results from injuries received or disease contracted in such service within one year after the termination of such war.

NOTE.—The above was passed by Congress after this chapter was written and the book nearly printed.

If the tax is on the transfer there must be a transferee and some provision must be made for adjusting the burden among several transferees. Apparently the law is regarded by the treasury department as an estate tax on property. How the courts will regard it, and, if they sustain the law, how they will legislate to adjust the burdens of the tax remains to be seen.

b. EXEMPTIONS AND DEDUCTIONS.

To non-residents there is no specific exemption.

On all estates of resident decedents \$50,000 is deducted before any tax can accrue.

There is also deducted debts, funeral expenses, administration expenses, state inheritance taxes, mortgages, losses not compensated by insurance and any other deduction allowed by the laws of the state where the estate is administered.

In case of non-residents such deductions are proportioned on the ratio of the value of the property in this country to the entire estate of the decedent located elsewhere.

c. DUTIES OF EXECUTORS.

Within thirty days after qualifying the executor or administrator must give written notice to the collector of internal revenue if the gross estate exceeds \$60,000 in case of a resident, or in case of a non-resident if any part of the property is situated within the United States, and file an inventory.

As the executor is appointed by a state court and has no relations with the United States government the power to impose this duty upon him is not clear. At all events it is the first taxing statute that requires notice from the taxpayer instead of providing that the taxing power shall itself give the notice. Apparently the Congress supposed that the "notice and a hearing" afforded should be for the benefit of the taxing power and not for the benefit of the taxpayer.

d. DISCOUNT INTEREST AND PENALTY.

The tax is due within one year and must be paid from the principal of the estate before any distribution. A discount of 5% per annum is allowed for payment before the year, based on the amount of time the tax is anticipated. After 90 days the tax draws interest at 10% from death but the penalty may be reduced to 6% in case of unavoidable delay. Unpaid taxes remain a lien against the estate for ten years.

e. TREASURY DEPARTMENT RULINGS.

Some of the important rulings of the treasury department upon questions arising in specific cases under the tax are as follows:

1. Transfers in contemplation of death made prior to the statute are taxable if the decedent died after the statute took effect.

2. Inheritance taxes imposed by the states are a proper deduction in ascertaining the net estate. (Revoked Sept. 1, 1917. Not allowed since that date.)

3. Income and increases during settlement are not taxed but losses are allowed.

4. Advance payments for the discount are not accepted unless a reasonably accurate inventory has been filed.

5. United States bonds must pay the inheritance tax and be included in the net estate.

6. One half of a wife's community property under Texas and Louisiana laws is taxable.

7. Deductions are regulated by those allowed by the local state courts.

3. The Federal Statute and Department Regulations.

The Federal Statute (Sec. 212) authorized the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to make such regulations as he may deem necessary to carry out the provisions of the

act, and these regulations, within that limitation, and if consistent with the Federal laws and the Constitution, have the force of law.

The statute, accompanied by the regulations prescribed, was issued by the Department as Internal Revenue Regulations No. 37, May, 1917, and is the most recent and only authoritative exposition of the law, in the absence of judicial construction.

In view of the doubtful constitutionality of the entire statute, emphasized rather than minimized by the view of the department; the law as interspersed with these regulations is given as issued by Regulation No. 37, as follows:

INTERNAL REVENUE REGULATIONS NO. 37, MAY, 1917.*

LAW AND REGULATIONS RELATING TO THE ESTATE TAX.

[For convenient reference each section of Title II of the revenue act of September 8, 1916, or of Title III of the special preparedness revenue act of March 3, 1917, is immediately followed by the pertinent articles of the regulations. Unless otherwise shown, all sections are of the September 8, 1916, act.]

DEFINITIONS.

SEC. 200. That when used in this title —

The term "person" includes partnerships, corporations, and associations.

The term "United States" means only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator, any person who takes possession of any property of the decedent; and

The term "collector" means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue at Baltimore, Md.

*Additional war tax October 3, 1917, enacted after this chapter was in press. See page 494.

ARTICLE I. The tax is not imposed in Porto Rico or the Philippine Islands, but, under the definition in the title, the property in the United States of deceased residents of the islands is taxable as the property of non-residents.

ART. II. This act does not distinguish between citizens and aliens but does distinguish between residents and non-residents of the United States. If a citizen of the United States has maintained his principle domicile abroad prior to death, his estate is taxable as that of a non-resident.

ART. III. If a resident decedent has maintained domiciles in more than one collection district, the facts should be presented to the commissioner for ruling as to the proper collector to receive 30-day notice, return and tax payment.

RATES OF TAX.

SEC. 201. That a tax (hereafter in this title referred to as the tax), equal to the following percentages of the value of the net estate to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this act, whether a resident or non-resident of the United States:

One per centum of the amount of such net estate not in excess of \$50,000;

Two per centum of the amount by which such net estate exceeds \$50,000 and does not exceed \$150,000;

Three per centum of the amount by which such net estate exceeds \$150,000 and does not exceed \$250,000;

Four per centum of the amount by which such net estate exceeds \$250,000 and does not exceed \$450,000;

Five per centum of the amount by which such net estate exceeds \$450,000 and does not exceed \$1,000,000;

Six per centum of the amount by which such net estate exceeds \$1,000,000 and does not exceed \$2,000,000;

Seven per centum of the amount by which such net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

Eight per centum of the amount by which such net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

Nine per centum of the amount by which such net estate exceeds \$4,000,000 and does not exceed \$5,000,000; and

Ten per centum of the amount by which such net estate exceeds \$5,000,000.

TITLE III.—ACT OF MARCH 3, 1917.

SEC. 300. That section two hundred and one, Title II, of the act entitled "An act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, be, and the same is hereby, amended to read as follows:

"SEC. 201. That a tax (hereinafter in this title referred to as the tax), equal to the following percentages of the value of the net estate, to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this act, whether a resident or nonresident of the United States:

"One and one-half per centum of the amount of such net estate not in excess of \$50,000;

"Three per centum of the amount by which such net estate exceeds \$50,000 and does not exceed \$150,000;

"Four and one-half per centum of the amount by which such net estate exceeds \$150,000 and does not exceed \$250,000;

"Six per centum of the amount by which such net estate exceeds \$250,000 and does not exceed \$450,000;

"Seven and one-half per centum of the amount by which such net estate exceeds \$450,000 and does not exceed \$1,000,000;

"Nine per centum of the amount by which such net estate exceeds \$1,000,000 and does not exceed \$2,000,000;

"Ten and one-half per centum of the amount by which such net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

"Twelve per centum of the amount by which such net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

"Thirteen and one-half per centum of the amount by which such net estate exceeds \$4,000,000 and does not exceed \$5,000,000; and

"Fifteen per centum of the amount by which such net estate exceeds \$5,000,000."

SEC. 301. That the tax on the transfer of the net estate of decedents dying between September eighth, nineteen hundred and sixteen, and the passage of this act shall be computed at the rates originally prescribed in the act approved September eighth, nineteen hundred and sixteen.

ART. IV. This is not an inheritance tax, and the interests of separate beneficiaries and the manner of their taking have no bearing upon the question of liability to tax or the amount of tax due. This is a transfer tax in a lump sum resting upon the decedent's whole net estate computed according to sections 202 and 203 of the act.

ART. V. The rates of tax apply upon separate blocks of the net estate, the first \$50,000 being taxable at the rate

of 1 per cent. (1½ per cent. if the decedent died after March 2, 1917), the next \$100,000 being taxable at the rate of 2 per cent. (3 per cent. if the death occurred after March 2, 1917), etc.

ART. VI. The rates imposed in the act of September 8, 1916, apply to estates of those who died on or after September 9, 1916, and before March 3, 1917; the higher rates imposed in the act of March 3, 1917, apply to estates of those who died on or after March 3, 1917.

THE GROSS ESTATE.

SEC. 202. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate.

(b) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title; and

(c) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have belonged to the decedent.

For the purpose of this title stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States, and any property of which the decedent has made a transfer or with respect to which he has created a trust, within the meaning of subdivision (b) of this section, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death.

ART. VII. All property, tangible and intangible, which is legally liable for satisfaction of charges against the estate

and for administration expenses and to distribution to the decedent's beneficiaries is a portion of his gross estate to be shown in the return on Form 706. There is no provision of the taxing act under which the value of widow's dower or husband's curtesy, or any similar interest of a successor to decedent by whatever name designated in the local law, can be excluded or deducted from the gross estate. This is true also of real and other property passing to beneficiaries without the intervention of an executor.

ART. VIII. The value at the time of death of United States and other "tax free" bonds owned by decedent is a part of the gross estate. (T. D. 2449.)

ART. IX. Income of the estate and appreciation of values after death are not to be included in the gross estate (T. D. 2406). Dividends upon stock declared prior to the day of death are to be included, whether paid before or after death. Dividends declared after the day of death are not to be included. Interest upon bonds is to be computed to the day of death and the amount thus found to have been accrued is to be included in the gross estate. Interest on mortgage notes and certificates of deposit, dividends, if fixed and certain, on preferred stock, and income from other similar assets having fixed and certain earnings must be included in the gross estate to the extent of the amount actually accrued to the day of death (T. D. 2483).

ART. X. Insurance passing to the estate is to be returned on Form 706. If the contract of insurance has named a definite beneficiary and the insurance is paid directly to such beneficiary it is not a part of the gross estate. If insurance which by the terms of the contract is payable to the executor, is transferred to another beneficiary or trustee for another beneficiary, and the transfer is made in contemplation of death, the value of such insurance is taxable under the provisions of paragraph B, section 202.

ART. XI. Property passing under a general power of appointment is to be included as a portion of the gross estate of a decedent appointor. (T. D. 2477.)

ART. XII. The value of loans evidenced by promissory notes is to be included in the gross estate, even though by will the decedent provides that the notes shall be canceled.

ART. XIII. Any transfer of his property, except for a valuable consideration, effected by a taxable decedent at any time during his life but in contemplation of his death is a portion of his gross estate, regardless of whether the transfer was fully effected or the instrument of transfer executed before or after the passage of the taxing act, September 8, 1916. (T. D. 2385.)

ART. XIV. If any transfer of a material part of decedent's property was effected within two years prior to death a presumption lies that it was made in contemplation of death and its value must be shown upon the return on Form 706. With the return the estate may submit evidence and argument to establish whether the transfer was actually made in such contemplation, and such evidence will be passed upon by the commissioner before the assessment against the estate is confirmed. It should be noted that taxable transfers are not limited to those made within two years prior to death. A transfer made at any time whatsoever during the transferor's life is taxable if it is of the kind defined in paragraph B, section 202.

ART. XV. Where community property is held in partnership by husband and wife during the lives of both, one-half the whole value of the community property is to be included in the gross estate of the decedent husband or wife. Where, however, the wife's interest in so-called community property is equivalent merely to a common law right of dower the whole value of the so-called community property is to be included in the deceased husband's gross estate. This is the rule, too, where the husband's interest

in such property is equivalent merely to the curtesy right. (T. D. 2450.)

ART. XVI. Bonds, as well as stocks, in domestic corporations, owned by a non-resident decedent, are a portion of this gross estate within the United States.

THE NET ESTATE.

SEC. 203. That for the purpose of the tax the value of the net estate shall be determined —

(a) In the case of a resident, by deducting from the value of the gross estate —

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise, support during the settlement of the estate of those dependent upon the decedent, and such other charges against the estate, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered; and

(2) An exemption of \$50,000;

(b) In the case of a non-resident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States that proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated. But no deduction shall be allowed in the case of a non-resident unless the executor includes in the return required to be filed under section two hundred and five the value at the time of his death of that part of the gross estate of the non-resident not situated in the United States.

ART. XVII. A deduction can not be taken merely because it would be allowable as a credit in the executor's account under the laws of the local jurisdiction; the amount must actually have been disbursed by the executor. Furthermore, if an expenditure of the nature of those specified in sub-paragraph 1, above, has exceeded the amount allowable under the local law as a credit in the executor's account, only that portion which represents the legal credit can be deducted on the estate tax return. (T. D. 2453.)

ART. XVIII. Only such mortgages as were existent and unpaid at the time of decedent's death may be deducted.

The whole value of the mortgaged property should be shown in the gross estate and the amount of the mortgage deducted in the proper place on page 2 of the return on Form 706.

ART. XIX. Support of decedent's dependents can not be deducted unless there has been an actual disbursement by the executor under the conditions and in the amount prescribed by the local law. If the local law contains no provision regarding support of dependents no amount can be deducted because of such support.

ART. XX. The specific exemption of \$50,000 applies only to the estates of residents. It is taken in arriving at the net estate, so that a net estate of any value whatever is subject to tax. Thus if a resident decedent's gross estate had a value of \$60,000, and the legal deductions under the local law for expenses, charges, claims, and losses aggregated \$8,000, the net value of \$52,000 is further reduced by the specific exemption of \$50,000, leaving a net estate of \$2,000, subject to tax at the minimum rate, the tax due being \$20 under the act of September 8, 1916, or \$30 under the act of March 3, 1917.

ART. XXI. The Federal estate tax is not determined, does not attach and can not be assessed or paid until the net estate upon which it is based has been exactly established. The estate tax, therefore, can not be deducted from the gross estate to determine the taxable net estate.

ART. XXII. The due date for the return (Form 706) is simultaneous with the due date for the tax—i. e., one year from the day of decedent's death. While a tentative return may be filed within the year (or a final return if administration is completed), upon such tentative return estimated expenses can not be deducted. If ultimately there proves to have been an overpayment of tax because of expense arising after the filing of return a claim for the abatement or refund of the excess tax may be filed.

ART. XXIII. From the gross estate of a non-resident decedent there may be deducted, provided the value of the entire gross estate wherever situated is shown upon the return, a proportionate share of the expenses, claims, losses and other legal charges equal to the share the gross estate within the United States is of the entire gross estate wherever situated:

Example: If the total gross estate wherever situated is \$1,000,000, and the share in the United States, Alaska, and Hawaii is \$100,000, and if the total legal expenses, charges, and losses is \$50,000, the share deductible from the gross estate within the United States etc., is \$5,000. A synopsis of the correct return would read: Gross estate, \$100,000; legal deductions, \$5,000; net estate, \$95,000; tax due, \$750 on \$50,000 plus \$1,350 on \$45,000, total tax \$2,100 (at the rates of the March 3, 1917, act). Unless the return shows the value of the whole gross estate wherever situated, the tax will be collected upon the value of the entire gross estate in the United States, without deduction of any kind or amount.

NOTICE AND RETURN

SEC. 205. That the executor, within thirty days after qualifying as such, or after coming into possession of any property of the decedent, whichever event first occurs, shall give written notice thereof to the collector. The executor, shall, also, at such times and in such manner as may be required by the regulations made under this title, file with the collector a return under oath in duplicate, setting forth (a) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (b) the deductions allowed under section two hundred and three; (c) the value of the net estate of the decedent as defined in section two hundred and three; and (d) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

Return shall be made in all cases of estate subject to the tax or where the gross estate at the death of the decedent exceeds \$60,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall

include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate. The Commissioner of Internal Revenue shall make all assessments of the tax under the authority of existing administrative special and general provisions of law relating to the assessment and collection of taxes.

SEC. 206. That if no administration is granted upon the estate of a decedent, or if no return is filed as provided in section two hundred and five, or if a return contains a false or incorrect statement of a material fact, the collector or deputy collector shall make a return and the Commissioner of Internal Revenue shall assess the tax thereon.

ART. XXIV. The general rule governing the filing of the 30-day notice is that as to all property of the decedent which will come into charge of the executor the duty of filing the notice, Form 704, is upon the executor and the form must be filed with the collector in whose district was decedent's domicile at the time of death within 30 days after the granting of letters. With regard to all property which passes directly to beneficiaries and will not come in charge of the executor the primary duty of filing the notice, Form 705, rests upon the immediate possessor after decedent or upon the person having in charge the property at the time of decedent's death, for instance the bank in which is deposited the joint account of decedent and another. Such person is made the "executor" under the definition in section 200 for the purpose of filing the notice, since whereas prior to the death he held the property for the decedent, immediately upon the death there is a change in the nature of the holding and the holder takes possession, within the meaning and intent of the law, for the succeeding owner. In such cases Form 705 must be filed within 30 days after decedent's death. If, however, at the time of taking by the succeeding owner the notice, Form 705, has not been filed, this duty devolves immediately upon such succeeding taker and he must file, within 30 days from the date of possession, the Form 705 with the proper collector. (T. D. 2372, T. D. 2421, and T. D. 2454.)

ART. XXV. The law contemplates also that all persons who shall have received within two years prior to the death of the decedent any material part of decedent's property, either as a gift in contemplation of death, or by a transfer intended to take legal effect at decedent's death, or by a so-called sale which was not a bona fide sale for a fair consideration in money or money's worth, should file a similar notice with the collector within 30 days after the death of decedent. This is clearly indicated by section 202, paragraph B, of the act, wherein, for the purpose of tax liability, such gifts, transfers, and "sales" are held effective in every case as of the day of the donor's or transferor's death. With the notice to the collector, the donee or transferee may file such evidence as may be desired to establish whether the gift or transfer was in contemplation of or intended to take effect at, the donor's or transferor's death, or whether the sale was bona fide.

ART. XXVI. The 30-day notice (Form 705) is required to be filed for all property of every kind, located or legally situate in this country (including Hawaii and Alaska), by those agents or representatives, donees, transferees, trustees, or fiduciaries of a decedent dying domiciled abroad, whether alien or citizen of the United States. The notice must be filed within 30 days from decedent's death with the collector of internal revenue in whose district the property within this country is situate, unless the local agent, etc., having the property in charge knows that there is other property of decedent located in another collection district, in which case the notice is to be filed with the collector of internal revenue, Baltimore, Md.

If it be not possible for the local agent, representative, etc., to file the notice within 30 days from death of the non-resident, the penalty denounced in section 210 will not be asserted if the notice is filed within 30 days from the day

upon which the local agent, representative, etc., receives information of the nonresident decedent's death.

Each collector receiving Form 705 showing property of a non-resident will immediately inform the commissioner of the fact. A record will be kept in the commissioner's office from which it can be determined whether Forms 705 for a given estate have been filed in more than one collection district, in which case the several collectors will be instructed to forward the Forms 705 to the collector at Baltimore, Md.

This regulation applies to transfer agents of corporate stock, receiving into possession for transfer such personality of a non-resident decedent; to safe-deposit companies, warehouses, and similar custodians of a non-resident's property in this country; to brokers holding as collateral securities belonging to a non-resident decedent, to banking institutions holding money of non-resident decedents on deposit or for any specific purpose, such as the purchase of goods, so long as the title rests in the non-resident decedent, his estate or his heirs, and to debtors in this country of non-resident decedents.

It does not apply to carriers of property of a non-resident decedent while such property is in their charge for the purpose of transit.

ART. XXVII. The filing of Forms 704 and 705 should not be delayed for the securing of exact information as to the value of the gross or net estate. The spaces upon the forms for the insertion of such values may be filled in with approximate figures representing the judgment at the time of filing of the executor or beneficiary as to the values of the gross and net estate. The signature of one executor on Form 704 is sufficient.

THE RETURN.

ART. XXVIII. Return is required of the estate of every resident decedent whose gross estate, as defined in the law,

exceeds in value \$60,000, or whose net estate, as defined in the law, has any value in excess of the specific exemption of \$50,000.

Return is required of the estate of every non-resident owning property in the United States, Hawaii, or Alaska, including stock or bonds of domestic corporations, or who has at any time transferred any such property in contemplation of death.

ART. XXIX. The filing of tentative return within one year after decedent's death does not relieve from the necessity of filing final and complete return at the expiration of the year. If at the expiration of the year it is impossible for the executor to show upon the return complete and accurate data of the gross estate and deductions, he shall inform the collector, fully explaining the necessity for further delay, and the collector, if he considers the delay unavoidable, may extend the time for filing over a further period until, in the collector's judgment, the cause for the delay has been removed. Interest, however, begins to run from 90 days after the year from death has elapsed, and extensions for a period beyond 90 days should not be granted; at the end of the 90 days, even though the cause for delay still exists, the collector should require return to be made in such manner that the tax shown thereon to be due will satisfy, in the collector's opinion, all tax the estate will be required by the law to pay. (See Sec. 207, below.) The final return should be signed and sworn to by all the executors.

ART. XXX. In the case of estates having no executors or administrators, or where any part of the gross estate passes other than in charge of executors or administrators, the act places upon the separate beneficiaries the precise duties with regard to the filing of the return and the payment of tax that are otherwise imposed on the executors and administrators. Each such beneficiary is as fully liable to all the penalties provided in the act as is the executor

or the administrator. Where the property is held for the beneficiary by guardians, trustees, or fiduciaries, the return may be executed by such representatives of the beneficiary.

ART. XXXI. Each beneficiary making return for any part of the estate is required by the law to give all the information possible regarding any part of the estate. The final and complete return, in cases where no executor or administrator acts, will be compiled by the collector from the several returns of the individual beneficiaries. After having determined in this matter the total gross and net estate, the rate of tax, and the proportionate amount due from each beneficiary, the collector shall notify each beneficiary accordingly, and will enter upon the assessment list the amount of tax apportionable to each.

ART. XXXII. Since the gross estate includes the full value of mortgaged property, and the mortgages are to be deducted instead of being excluded from the gross estate, where such gross estate, including the full value of mortgaged property, exceeds \$60,000, the return must be filed, even though with the mortgages taken into consideration the net value is less than \$50,000.

ART. XXXIII. In the case of property of a nonresident decedent in charge of an agent or other representative in this country, if within a year from the day of death of the nonresident the foreign executor has failed to file return, the collector shall require such return to be made by the person having such property in possession and charge. No deductions whatever may be taken upon such a return unless there is a showing that all the nonresident's property is located in this country and is included in the gross estate on the return.

Under no circumstances may the local agent or representative release to a foreign administrator or executor or a foreign beneficiary of the decedent any property

within this country at the time of decedent's death until either (1) the tax due because thereof has been paid or (2) ancillary letters have been taken out in this country or otherwise provision has been made by the estate for the satisfaction of the tax lien resting upon the decedent's property in this country. When such ancillary letters have been taken out or such provision has been made, the local agent, representative, etc., shall immediately inform the collector fully as to the facts.

An administrator or executor acting in a foreign country will not be recognized as relieving others in charge or possession of a decedent's property from responsibility for satisfying the requirements of the taxing act unless and until he has made return and tendered payment of all tax due. The penalty denounced in section 210 of the act will be asserted against every agent or representative in this country releasing to a foreign administrator, or executor of beneficiary of the decedent the property within this country, except where the requirements of this regulation have been complied with.

PAYMENT

SEC. 204. That the tax shall be due one year after the decedent's death. If the tax is paid before it is due, a discount at the rate of five per centum per annum, calculated from the time payment is made to the date when the tax is due shall be deducted. If the tax is not paid within ninety days after it is due, interest at the rate of ten per centum per annum from the time of the decedent's death shall be added as part of the tax, unless because of claims against the estate, necessary litigation, or other unavoidable delay the collector finds that the tax can not be determined, in which case the interest shall be at the rate of six per centum per annum from the time of the decedent's death until the cause of such delay is removed, and thereafter at the rate of ten per centum per annum. Litigation to defeat the payment of the tax shall not be deemed necessary litigation.

SEC. 207. That the executor shall pay the tax to the collector or deputy collector. If for any reason the amount of the tax can not be determined, the payment of a sum of money sufficient, in the opinion of the collector, to discharge the tax shall be deemed payment in full of the tax, except as in this section otherwise provided. If the amount so paid exceeds the amount of the tax as finally determined, the Commissioner of Internal

Revenue shall refund such excess to the executor. If the amount of the tax as finally determined exceeds the amount so paid, the commissioner shall notify the executor of the amount of such excess. From the time of such notification to the time of the final payment of such excess part of the tax interest shall be added thereto at the rate of ten per centum per annum, and the amount of such excess shall be a lien upon the entire gross estate, except such part thereof as may have been sold to a bona fide purchaser for a fair consideration in money or money's worth.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

ART. XXXIV. Advance payment of tax in an estimated lump amount can not be accepted. The initial tax-payment must be based upon a return showing reasonably complete and accurate figures for every item of gross estate and deductions.

ART. XXXV. Discount for advance payment is computed from the date of payment (actual date of receipt by collector) to the due date, i. e., one year from day of death. It is based upon a year of 365 days. An approved formula for the computation is: Tax multiplied by 5 per cent., multiplied by the exact number of days from date of payment to due date, divided by 365 equals discount. In transmitting payment by mail allowance must be made for the time that will elapse before the payment is received by the collector, since discount can be taken only from the date of actual receipt of payment.

COLLECTION BY COURT PROCEEDINGS.

SEC. 208. That if the tax herein imposed is not paid within sixty days after it is due the collector shall, unless there is reasonable cause for further delay, commence appropriate proceedings in any court of the United States, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the cost and expenses of every description to be allowed by the court, shall be first paid and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. If the tax or any

part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the person whose interest in the estate of decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liabilities for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution..

ART. XXXVI. Collectors should not bring proceedings for the collection of estate tax without first reporting all the facts to the commissioner. In the case of the property in this country of nonresident decedents, it is apprehended that there may arise cases where, under present conditions, it will be impossible for payment of tax to be made upon the due date, or within 90 days thereafter. If the nonresident was a citizen of a country with which the United States may not be sustaining diplomatic relations, the collector should report all the facts in his knowledge to the commissioner immediately upon the expiration of the 60 days period of grace, in order that there may be no delay in determining what steps are necessary to be taken to assure the collection of the tax. In the cases of the estates of decedents who were citizens of an allied or friendly country the collector should report the facts with his recommendation at the expiration of the 90 days after the due date.

ART. XXXVII. The provision in the last sentence of section 208 merely recognizes the essential fact that this is not an inheritance, but is an estate tax. It is levied upon the whole net estate and is payable therefrom by the executor before distribution to and without regard to its effect upon the several inheritors. In the event, therefore, that in the collection of the tax the Government has

proceeded against that part of the estate which has come into possession of an individual beneficiary, the law provides an adjustment of the tax among the several beneficiaries in such a manner as to restore the condition that would have existed had the tax been paid when due, as a tax upon and payable out of the whole net estate.

LIEN.

SEC. 209. That unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration allowed by any court having jurisdiction thereof, shall be divested of such lien.

If the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth) and if the tax in respect thereto is not paid when due, the transferee or trustee shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for a fair consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for a fair consideration in money or money's worth.

Note in connection with this section the lien provision in section 207, which reads:

If for any reason the amount of the tax can not be determined, the payment of a sum of money sufficient, in the opinion of the collector, to discharge the tax shall be deemed payment in full of the tax, except as in this section otherwise provided. If the amount so paid exceeds the amount of the tax as finally determined, the Commissioner of Internal Revenue shall refund such excess to the executor. If the amount of the tax as finally determined exceeds the amount so paid, the commissioner shall notify the executor of the amount of such excess. From the time of such notification to the time of the final payment of such excess part of the tax, interest shall be added thereto at the rate of ten per centum, and the amount of such excess shall be a lien upon the entire gross estate, except such part thereof as may have been sold to a bona fide purchaser for a fair consideration in money or money's worth.

ART. XXXVIII. The provisions of section 209 apply where the tax shown upon a final return to be due remains unpaid. The provision above quoted from section 207 applies where, after payment of the tax shown upon a return accepted by the collector and the commissioner as final, it should be discovered later, whether because of court decisions necessitating a change in rulings, or because of the discovery of additional property subject to inclusion in the gross estate, or for any other reason, that an additional tax must be assessed. In other words, the tax shown to be due upon a final return is a lien for ten years, or until sooner paid, upon the entire gross estate, except such part as is used for the payment of charges and expenses of administration, this lien following the property into the hands of distributees and purchasers. But once the tax has been paid upon a return accepted by the commissioner as final, if later additional tax is found to be due, the lien for this additional tax rests upon the property in the hands of the decedent's executor or beneficiaries, but does not rest upon any part of the decedent's property which may have been sold to a bona fide purchaser.

PENALTIES.

SEC. 210. That whoever knowingly makes any false statement in any notice or return required to be filed by this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both, in the discretion of the court.

Whoever fails to comply with any duty imposed upon him by section two hundred and five, or, having in his possession or control any record, file, or paper containing or supposed to contain any information concerning the estate of the decedent, fails to exhibit the same upon request to the Commissioner of Internal Revenue or any collector or law officer of the United States, or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

ART. XXXIX. It should be noted that an internal-revenue agent, inspector or deputy collector, or any duly

authorized representative of the commissioner, when instructed by the commissioner and after due request, has complete authority to examine records containing or by him supposed to contain any data bearing upon the question of the liability of an estate to tax. It is not necessary for the collector to issue a summons for the production of such records in his presence. The provision in section 3173 R. S. is supplemented, for the purposes of this title, by the explicit provision of section 210.

ADMINISTRATION.

SEC. 211. That all administrative, special, and general provisions of law, including the laws in relation to the assessment and collection of taxes, not heretofore specifically repealed are hereby made to apply to this title so far as applicable and not inconsistent with its provisions.

SEC. 212. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make such regulations and prescribe and require the use of such books and forms as he may deem necessary to carry out the provisions of this title.

* * * * *

SEC. 902. That unless otherwise herein specifically provided, this act shall take effect on the day following its passage, and all provisions of any act or acts inconsistent with the provisions of this act are hereby repealed.

Approved, September 8, 1916.

ART. XL. Collectors will not report on the assessment list, Form 23, estate tax, except as an advance collection and with each list forwarded on which such tax is reported from estates where the date of death was March 3, 1917, and subsequent thereto will be attached a receipt Form 476, covering such taxes collected. It should be borne in mind that only estate tax under the act of March 3, 1917, will be entered on this receipt and for lists closing quarters of the fiscal year two receipts Form 476 will be furnished one for estate tax under the act mentioned and the other for all other advance collections reported on that list.

ART. XLI. The act does not apply to the estates of decedents who died on or before September 8, 1916.

W. H. OSBORN,

Commissioner of Internal Revenue.

Approved:

W. G. McADOO,

Secretary of the Treasury.

C.—THE NEW YORK STATUTE.

1. History and Development.

The State of New York collects from a half to a third of all the inheritance taxes and at least one-half of all the litigations arising from the imposition of those taxes have been decided by her courts. Her various statutes with all their experiments and changes of policy have been copied along with the construction placed upon them by her courts by nearly every state in the Union.

a. FREQUENT CHANGES.

In the course of the last forty years the New York statute has been altered or amended no less than ninety-one times. She has taxed all the personal property of collaterals and strangers and exempted direct heirs. She has added real estate and taxed transfers to near relations. She has taxed all personal property within the state of non-residents and has exempted such property except in the case of tangibles and she is now drifting away from that policy before the other states can follow her. She has experimented with all sorts of graded rates and exemptions and radically changed them again only last year. The original statutes were poorly drafted and ingenious attorneys found many loopholes for avoiding the tax on behalf of their clients. As fast as these flaws were pointed out by the courts there has been a constant effort to patch the statute and stop the leaks. In spite of all this the present act is fairly consistent and intelligible

and the practice under it well established and defined. Most of its essential details have been preserved and perfected throughout the legislation and litigation of nearly half a century.

b. LIST OF THE STATUTES.

Following is a full list of all the inheritances tax statutes passed by the New York Legislature since the first tax was imposed in 1885:

Year	Chapter
1885.....	483.
1887.....	713.
1889.....	307-479.
1890.....	553.
1891.....	34-215.
1892.....	167, 168, 169, 399, 443.
1893.....	199-704.
1894.....	767.
1895.....	191, 378, 515, 556, 861.
1896.....	160, 908, 952, 953.
1897.....	284, 375.
1898.....	88, 289.
1899.....	76, 269, 270, 389, 406, 672, 737.
1900.....	379, 382, 658, 723.
1901.....	173, 288, 458, 493, 609.
1902.....	101, 283, 496.
1903.....	41.
1904.....	758, 62.
1905.....	368.
1906.....	111, 567, 699.
1907.....	204, 323, 709.
1908.....	310, 312, 321.
1909.....	62, 596.
1910.....	70, 600, 706.
1911.....	308, 732, 800, 803.
1912.....	206, 214.

Year	Chapter
1913.....	356, 366, 639, 795.
1915.....	383, 664.
1916.....	80, 323, 548, 549, 550, 551, 562, 582.
1917.....	53, 128, 194, 481, 482, 700.

Most of these are merely amendments and many of them are trivial but only six times has the legislature enacted an entire statute.

These statutes are:

- Laws 1885, Chapter 483. In Effect June 30.
- Laws 1887, Chapter 713. In Effect June 25.
- Laws 1892, Chapter 399. In Effect May 1.
- Laws 1896, Chapter 908. In Effect June 15.
- Laws 1905, Chapter 368. In Effect June 1.
- Laws 1909, Chapter 62, Article 10. In Effect Feb. 17.

The last statute is the present law which has been amended, as indicated, thirty times.

c. THE FIRST STATUTES TAXING ONLY COLLATERALS.

The first inheritance tax in the State of New York was imposed by Chapter 493, L. 1885, which became a law June 10 of that year, was upon the entire estate of the decedent if valued at more than \$500, and included all property within the state of non-residents. It exempted from any tax the father, mother, husband, wife, children, brother, sister, lawful lineal descendants, son-in-law, daughter-in-law and all corporations or institutions exempted by law from general taxation. Upon all others it imposed the flat rate of 5%. It took effect twenty days after its passage.

Matter of Howe, 112 N. Y. 100.

It taxed transfers by will and intestate laws and transfers by " deed, grant, sale, or gift made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor."

The only material changes made by the second statute, Laws of 1887, Chapter 713, was to add an adopted or mutually acknowledged child to the exempt class and make provision for the computation of the value of life estates and remainders by the superintendent of insurance on the 5% basis.

d. THE ACT OF 1892, TAXING DIRECT INHERITANCES.

Chapter 399, L. 1892, took effect May 1, 1892.

Matter of Milne, 76 Hun 328.

By the first section the description of transfers in avoidance of the tax was strengthened and made to read: "by deed, grant, bargain, sale or gift made *in contemplation of the death* of the grantor, vendor or donor or intended to take effect in possession or enjoyment at or after such death."

The tax was also made retroactive as to any such transfers by providing "such tax shall also be imposed when any such person or corporation becomes beneficially entitled in possession or expectancy to any property or the income thereof by any such transfer *whether made before or after the passage of this act*."

A tax of 1% on all estates in personal property valued at more than \$10,000 was imposed when the beneficial interest passed to the persons exempted by the former statutes excepting bishops and religious corporations. The tax at 5% when the property passed to others remained unchanged.

When the aggregate amount transferred or passing to both classes of taxable persons was over \$500, but less than \$10,000, the portion passing to the 5% class was taxable.

Matter of Rosendahl, 40 Misc. 542; 82 Supp. 992.

Matter of Garland, 88 App. Div. 380; 84 Supp. 630.

Matter of Mock, 113 App. Div. 913; 49 Misc. 283.

Matter of Corbett, 171 N. Y. 516; 64 N. E. 209.

A section of definitions was added in which it was provided: "The words 'estate' and 'property' as used in this act shall be taken to mean the property or interest therein of the testator, intestate, grantor, bargainor or vendor passing or transferred to those not specifically exempted by the provisions of this act and not as the property or interest therein passing or transferred to individual legatees, etc."

This provision made it clear that the tax was imposed as an excise on the right to *transfer* and not as an impost upon the right to *receive*.

Matter of Hoffman, 143 N. Y. 327; 38 N. E. 311.

e. THE ACT OF 1896 — POWERS OF APPOINTMENT.

In 1896 the act of 1892 was incorporated as Article 10 of the tax law by Ch. 908, L. 1896 in effect June 15 of that year; but no material change was made, excepting that banks and safe deposit companies holding securities of a decedent were for the first time required to notify the comptroller before delivering them. The following year, however, by ch. 284, L. 1897 a provision was added which has been the subject of much litigation.

It was found that valuable estates were passing under powers of appointment created in wills of decedents who had died before the inheritance tax laws were enacted. The courts were inclined to the view, and the Court of Appeals subsequently decided, that the exercise of such power was not taxable under the statute. (*Matter of Harbeck*, 161 N. Y. 211; 55 N. E. 850.)

The amendment of 1897 added the following as a fifth subdivision to section 220:

"Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appoint-

ment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure."

In 1899 by Chapter 76 Section 230 was amended to this effect: "All estates upon remainder or reversion which vested prior to June 30, 1885 but which will not come into actual possession or enjoyment until after the passage of this act shall be assessed, when those beneficially entitled enter into possession."

This amendment and the provision taxing successions even though there was a failure to exercise the power of appointment were held unconstitutional.

Matter of Pell, 171 N. Y. 48; 63 N. E. 789.

Matter of Lansing, 182 N. Y. 238; 74 N. E. 882.

These cases proved a stumbling block in the development of the transfer tax law in New York. The latter provision was copied by Massachusetts and several other states and has there been upheld.

Minot v. Treasurer, 207 Mass. 588; 93 N. E. 973.

Burnham v. Treasurer, 212 Mass. 165; 98 N. E. 603

The tax upon the succession under the exercise of a power when the creator of the power died before the statute was sustained.

Matter of Dows, 167 N. Y. 227; 60 N. E. 439; aff. *Orr v. Gilman*, 183 U. S. 278; 22 S. Ct. Rep. 213.

It is where there is a failure to exercise that the New York rule diverges.

f. AMENDMENT OF 1899 — HIGHEST RATE.

Chapter 76, Laws of 1899 amended the rules as to the taxation of contingent remainders which amendment still obtains in this state and has been followed in several others. It has been fruitful of litigation and though it has stood for nearly twenty years it was again before the Court of Appeals for construction in 1917.

Matter of Hutton, 176 App. Div. 217; 160 Supp. 223; aff. 220 N. Y.

As it is incorporated into the present statute substantially unchanged it requires no further comment here, the topic being fully considered under Contingent Remainders.

g. ACT OF 1905 — REAL ESTATE ADDED.

The re-enactment of 1905, Chapter 368, included real estate in the property passing to direct heirs and near relatives subject to the tax of one per cent. when the estate exceeded \$10,000 and extended the exemptions to practically all religious, charitable or benevolent corporations, including for the prevention of cruelty to animals, and these provisions are substantially incorporated in the present statute. It was first taxed by Ch. 41, L. 1903.

Under section 227 the comptroller or his representative was authorized to examine the securities of a decedent in the possession of a bank or trust company. This provision is retained in the present law and has been widely copied by other states.

Laws of 1908, Chapter 310, added the following, which is retained in the present statute, as to tangible property of non-residents.

“ Whenever the property of a resident decedent, or the property of a non-resident decedent within the state, transferred by will, is not specifically bequeathed or devised, such property shall, for the purposes of this act,

be deemed to be transferred proportionately to, and divided *pro rata* among all the general legatees and devisees named in said decedent's will, including all transfers under a residuary clause of such will."

2. The Present Law and its Amendments.

a. THE ORIGINAL STATUTE OF 1909.

Nominally the present inheritance tax law of the state of New York is Chapter 62 of the laws of 1909, being Article X of the Tax Law. But it has several times been radically changed by amendment though chiefly as to the theory of the tax and the graded rates and exemptions. The original statute was a substantial re-enactment of the act of 1905 and a codification of its numerous amendments.

b. THE "REIGN OF TERROR ACT" OF 1910.

The amendment of 1910, Chapter 706, is popularly known among estate attorneys as the "reign of terror" statute on account of the high rate of taxation it imposed. It became a law July 11, 1910, and remained in force until it was repealed and replaced by the act of 1911, Chapter 732, which took effect July 21, 1911.

It imposed the rates and prescribed the exemptions shown by the following table:

1910
TABLE OF RATES AND EXEMPTIONS UNDER CHAPTER 706,
L. 1910.
In Effect From July 11, 1910 to July 21, 1911.

CLASS OR RELATIONSHIP	Exemption	Up to 25,000	25,000 to 100,000	100,000 to 250,000	250,000 to 1,000,000	In excess of 1,000,000
		<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>
Father, mother, widow, minor child.....	\$5,000	1	2	3	4	5
Husband, adult child, brother, sister, daughter-in-law, adopted or mutually acknowledged child, step-child, lineal descendants.	Not taxed if less than \$500.	1	2	3	4	5
All others, except exempt, charitable, etc., corporations.	Not taxed if less than \$100.	5	10	15	20	25

It will be noticed that these rates, while they created a panic among large property owners in New York are identical with those now imposed by several of the western states. As to direct heirs it was not as severe as the present statute. In practical application no estate has ever come under the 25% rate.

c. A RADICAL CHANGE IN THEORY AS TO TRANSFER TAXED.

The whole scheme of the 1910 statute was to support the government by confiscatory rates upon the very rich collateral relative and impose no burden upon the moderately well to do.

Heretofore all estates above \$10,000 had been subject to tax on the *entire amount*. Under the act of 1910 an exemption was made to *each beneficiary* and the theory of the tax was also changed. Instead of being imposed upon the right to *transfer* it was imposed on the *right to receive*.

This change was accomplished by the amendment of the definition section, 243, and the language is retained in the present law:

§ 243. **Definitions.** The words "estate" and "property," as used in this article, shall be taken to mean the property or interest therein passing or transferred to individual or corporate legatees, devisees, heirs, next of kin, grantees, donees or vendees, and not the property or interest therein of the decedent, grantor, donor, or vendor passing or transferred, and shall include all property or interest therein, whether situated within or without this state. The word "transfer," as used in this article, shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift in the manner herein prescribed. The words "county treasurer" and "district attorney," as used in

this article, shall be taken to mean the treasurer or the district attorney of the county of the surrogate having jurisdiction as provided in section two hundred and twenty-eight of this article.

d. THE AMENDMENTS OF 1911. TANGIBLES AND INTANGIBLES.

Another radical change was made by the amendment of 1911, Chapter 732. It reduced the graded rates, preserved the altered theory of the tax and the exemptions to each beneficiary but it exempted all but the "tangible" property of non-resident decedents. As has been pointed out this statute resulted ultimately in the falling off of receipts from \$13,000,000 to \$7,000,000.

The statute eliminated the provision taxing the succession upon the failure to exercise a power of appointment in the estate of the donee of the power. This leaves property subject to a power which is not disposed of in either will to pass by intestacy and has left open a question which has been fruitful of litigation.

The rates and exemptions prescribed by the 1911 amendments were as follows:

TABLE OF RATES AND EXEMPTIONS AS ESTABLISHED BY
CHAPTER 732, L. 1911.

In Force From July 21, 1911 to May 15, 1916.

CLASS OR RELATIONSHIP	Exemption	Above exemption up to 50,000	50,000 to 250,000	250,000 to 1,000,000	All in excess of 1,000,000
		<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>
Father, mother, husband, wife, child, brother, sister, daughter-in-law, son-in-law, adopted child or mutually acknowledged child, lineal descendants.....	\$5,000	1	2	3	4
All others, excepting charitable, etc., corporations.....	1,000	5	6	7	8

This amendment was not retroactive.

Matter of Holt, N. Y. L. J., March 16, 1912.

Matter of Niles, N. Y. L. J., Jan. 5, 1912.

e. TAX EXTENDED TO CURTESY.

The courts having held that a husband's right of curtesy and his right to succeed to the personalty of his intestate wife this provision was added to the definitions of Section 243:

“ The words ‘ the intestate laws of this state,’ as used in this article, shall be taken to refer to all transfers of property, or any beneficial interest therein, effected by the statute of descent and distribution and the transfer of any property, or any beneficial interest therein, effected by operation of law upon the death of a person omitting to make a valid disposition thereof, including a husband's right as tenant by the curtesy or the right of a husband to succeed to the personal property of his wife who dies intestate leaving no descendants her surviving.”

f. MAXIMUM AND MINIMUM.

By Chapter 800, Laws of 1911 a well-intentioned provision was added to Section 241, which has proved of great difficulty in practical application. It relates to the taxation of contingent remainders at the highest rate and is still in the law. It provides that the difference between the “ highest possible rate ” and the minimum rate to which a contingent remainder may ultimately be subject shall be deposited by the state, the interest paid to the executors or trustee, and the principal sum returned in case the highest rate is not ultimately due; or securities may be deposited in lieu of cash.

3. The Problem as to the Property of Non-Residents.

a. PREVIOUS POLICY OF THE STATE.

From 1885 until 1911 the State of New York had taxed all personal property of non-residents within the state. Until 1912 Massachusetts did the same. The problems arising under such taxation were solved by the courts of

these two states and gradually a body of law was evolved through years of litigation. These statutes were widely copied by the western states where the decisions construing them are authoritative.

But as the western states began to impose high rates upon non-resident inheritances, it was found that the logical result was to impose double taxation. To avoid double taxation New York adopted the plan evolved by the Pennsylvania courts of declaring that "tangible" assets such as goods, wares and merchandise had a situs while intangibles, such as stocks and bonds, evidences of debt and money on deposit in banks, followed the domicile of the owner. It was expected that the other states would all fall in line. Massachusetts taxed only real estate of non-residents and exempted her own residents from taxation on property out of the state which was taxed elsewhere, by amendments adopted in 1912.

The plan offered by New York has been rejected by three-fourths of the states for the simple reason that being newer in development much of their most valuable property is owned by non-residents. The Massachusetts plan is fairer to the so-called "debtor" states — but it is the so-called "creditor" states that must take the initiative.

b. REAL ESTATE OF CORPORATIONS.

On the other hand it was soon found that the experimental distinction between tangible and intangible property of non-residents was full of loopholes which ingenious attorneys for estates were not slow to discover. Non-residents with large real estate holdings in New York began forming corporations to hold the real estate. The stock and bonds of such a corporation obviously were intangible. On the other hand to declare all stocks and bonds in New York corporations "tangible" as is done in

New Jersey and Oklahoma was practically to abolish the distinction.

c. CO-PARTNERSHIP ASSETS.

It also became apparent that the large proportion of the tangible assets owned by non-residents within the state consisted of goods, wares and merchandise of co-partnerships. Co-partnerships also owned real estate and as the interest of co-partners is only in the surplus after an accounting when all debts have been paid that interest is "intangible."

Matter of Albert D. Smith, N. Y. Law Journal, Mar. 14, 1914.

Matter of Ludeke, N. Y. Law Journal, Jan. 22, 1914.

Here was a second loophole and the statute of 1911 obviously required patching. This was the patch — being an amendment to section 220 by Chapter 664, L. 1915.

"When the transfer is by will or intestate law, of tangible property within the state or of any intangible property, if evidenced by or consisting of shares of stock, bonds, notes or other evidences of interest in any corporation, joint stock company or association wherever incorporated or organized, except a corporation, foreign or domestic, or joint stock company or association constituting, being or in the nature of a moneyed corporation, a railroad or transportation corporation or a public service or manufacturing corporation as defined and classified by the laws of this state, and the property represented by such shares of stock, bonds, notes or other evidences of interest consists of real property which is located, wholly or partly, within the state of New York, or of an interest in any partnership business conducted, wholly or partly, within the state of New York, in such proportion as the value of the real property of such corporation, joint stock company or association, or as the value of the entire property of such partnership located in the state of New York bears

to the value of the entire property of such corporation, joint stock company or association or partnership, and the decedent was a non-resident of the state at the time of his death."

d. EXEMPTIONS.

Until 1911 there had been but one exemption to the entire estate, or rather, estates of less than \$10,000 were not taxed at all when passing to near relatives but when above that amount the tax was levied on the entire estate. It was discovered that the statute was so worded in giving each beneficiary an exemption of \$5,000 in case of near relatives that one exemption might be allowed on property given in contemplation of death and a second exemption of a like amount on property passing to the same beneficiary by the will of the same decedent.

Matter of Hodges, 215 N. Y. 447.

This was not the intent of the legislature and by chapter 664, L. 1915, the language of section 221-a was changed to mend the flaw.

e. JOINT ESTATES.

Another and more serious loophole was discovered in the matter of joint bank deposits and joint holdings of stock. Estate attorneys had begun advising their clients — particularly married people, that by putting large holdings of stock in their joint names taxation would be avoided on the death of either joint tenant — and this was the result.

Matter of Tilley, 166 App. Div. 240, 151 Supp. 79; aff. 215 N. Y. 702.

Matter of Thompson, 167 App. Div. 354, 153 Supp. 166; aff. 217 N. Y. 609.

Matter of Dalsimer, 167 App. Div. 365, 153 Supp. 58; aff. 217 N. Y. 608.

Once again the statute had to be patched. Chapter 664, L. 1915, inserted the following as sub. 7, section 220:

“ Whenever intangible property is held in the joint names of two or more persons, or as tenants by the entirety, or is deposited in banks or other institutions or depositaries in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased tenant by the entirety, joint tenant or joint depositor and had been bequeathed to the surviving tenant by the entirety, joint tenant or joint tenants, person or persons by such deceased tenant by the entirety, joint tenant or joint depositor by will.”

f. CAPITAL INVESTED IN BUSINESS.

Still another effort was made by chapter 323, L. 1916, to prevent the escape of intangible personal property of non-residents which ought to pay a tax and yet preserve the new policy of the state against taxation of securities and money on deposit in banks and trust companies by non-residents and the following was added to sub. 2, Sec. 220.

“ Or when the transfer is by will or intestate law of capital invested in business in the state by a non-resident of the state doing business in the state either as principal or partner.”

Of all the departures from the theory of “ intangibles ” this is the most radical and far reaching. Its inconsistency is obvious. New York does not tax transfers of non-resident stock in domestic corporations, but if the capital is invested in a business that has not been incorporated

the transfer is taxed. Apparently it will not be long before the Empire state abandons the whole theory.

The amendment was recently construed by the Surrogate's Court of New York County in *Matter of Voorhees*, N. Y. L. J. June 1, 1917, 165 Supp. 527, where Surrogate Fowler said:

“ This is an appeal by the executor from the order assessing a tax upon the decedent's estate. The decedent, who was a resident of South Carolina, died on the 23d of June, 1916. He conducted a commission business in this city, and under the amendment effected by chapter 323 of the Laws of 1916 the capital invested in such business is subject to a tax. The controversy between the executor and the state comptroller relates to the value or amount of such capital. The appraiser found that it was \$73,758.59, and this amount included \$49,138.91 on deposit in the Fidelity Trust Company in this city. Besides conducting a commission business in this city, the decedent was engaged in farming in South Carolina. Each business was conducted separately. He shipped the farm produce to his place of business in this city, and it was disposed of in the same manner as consignments of goods made by other farmers. At the time of his death the business conducted by him as commission merchant in this city owed the business conducted by him as a farmer in South Carolina the sum of \$42,000 for farm produce sold and not accounted for. This sum did not constitute capital invested by the decedent in business in this state, and should be deducted from the amount on deposit with the Fidelity Trust Company in ascertaining the value of the taxable assets in this state. It is the fact, not appearances, which control taxability. The order fixing tax will be reversed and the appraiser's report remitted to him for the purpose of making the deduction indicated. Settle order on notice.”

g. TENANCY BY THE ENTIRETY.

Such tenancies have universally been held not taxable on the death of one of the tenants and New York is thus far the only state that has attempted their taxation. In the matter of joint estates the amendment of 1915 had used the word “intangible” and had then attempted to tax the devolution on the death of one tenant by the entirety. This was nonsense as there is no such tenancy of personal property and yet the language of the act excluded real estate. The word “intangible” was stricken out of the first line of Sec. 220, sub. 7, by chapter 323, L. 1916.

h. ATTEMPT TO DEFINE A “RESIDENT.”

The widest loophole in the act of 1911 and that through which millions of property escaped and is escaping taxation is found in the facility with which wealthy people whose business is in New York can maintain a domicile in Vermont where only collateral inheritances were taxed or in Rhode Island which did not tax them at all until 1916 or abroad where the flag protects them from foreign taxation while they do not contribute to the maintenance of its glory from their investments at home. Many such people live in New York in hotels throughout the winter but claim domicile at country homes.

To meet this situation — or attempt to meet it, the following amendment to the definition section, 243, was added by L. 1916, chapter 551:

“For any and all purposes of this article and for the just imposition of the transfer tax, every person shall be deemed to have died a resident, and not a nonresident, of the state of New York, if and when such person shall have dwelt or shall have lodged in this state during and for the greater part of any period of twelve consecutive months in the twenty-four months next preceding his or her death; and also if and when by formal written instrument

executed within one year prior to his or her death or by last will he or she shall have declared himself or herself to be a resident or a citizen of this state, notwithstanding that from time to time during such twenty-four months such person may have sojourned outside of this state and whether or not such person may or may not have voted or have been entitled to vote or have been assessed for taxes in this state; and also if and when such person shall have been a citizen of New York sojourning outside of this state. The burden of proof in a transfer tax proceeding shall be upon those claiming exemption by reason of the alleged nonresidence of the deceased. 'The wife of any person who would be deemed a resident under this section shall also be deemed a resident and her estate subject to the payment of a transfer tax as herein provided, unless said wife has a domicile separate from him.'

i. COMPUTATIONS.

In ascertaining the value of life estates and remainders the statute required calculations to be made on the same basis that life insurance premiums are calculated. But these calculations are based on the payment of the premium in advance and the payment of the death loss at the end of the policy year.

Although an estate passes to the remainderman immediately upon the death of the life tenant the same method of calculation was followed on the theory that the statute so provided. As a result the present value of the life estate plus the present value of the remainder did not equal the entire estate by exactly 5 per cent. of the value of the remainder. This represented the "kitty" of insurance companies but worked adversely to the state.

In other words about 5 per cent. of every estate, where there was a life use and a remainder over, escaped taxation through this discrepancy and this had continued ever since

the statute was enacted—resulting in a large aggregate loss. Through the influence of Comptroller Travis this discrepancy was abolished by Chapter 550, L. 1916, amending sections 230 and 231 in regard to the calculation of life estates and remainders. Hereafter the whole must equal the sum of all its parts in calculations of the inheritance tax.

j. THE NEW RATES AND EXEMPTIONS.

This brings us to the last important amendment of the present statute. Chapter 548, Laws of 1916, in effect May 15, 1916, amended sections 221 and 221a, radically changing the graded rates and exemptions as will appear from the following table.

TABLE OF GRADED RATES AND EXEMPTIONS AS ESTABLISHED
BY CHAP. 548, L. 1916.

In Effect May 15, 1916.

CLASS OR RELATIONSHIP	Amount exempt	Up to 25,000	25,000 to 75,000	75,000 to 100,000	In excess of 100,000
		<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>
Father, mother, husband, wife, child..	\$5,000	1	2	3	4
Legally adopted child.....	Not taxed if less than \$5,000.	1	2	3	4
Lineal descendants.....	Not taxed if less than \$500	1	2	3	4
Brother, sister, son-in-law, daughter- in-law, mutually acknowledged child.	Not taxed if less than \$500.	2	3	4	5
All others, except charitable and other corporations specifically exempted.	Not taxed if less than \$500.	5	6	7	8

The exemptions in the foregoing table are stated in accordance with the claims of the comptroller in the official publications of the department, that is, that, except in the case of a father, mother, husband, wife or child the tax is on the entire bequest, if it exceeds the exemption, but thus far the courts have failed to sustain the contention of the comptroller and have held that only the excess above

the exemption is taxable. A bill was passed by the legislature of 1917 clarifying the language, but was not signed by the governor and failed to become a law.

The question arose before Surrogate Atwell in *Matter of Bunce*, 100 Misc. 385, who held against the comptroller. He was affirmed without opinion by the Appellate Division, Fourth Department, 165 Supp. 426, and the matter is now pending before the Court of Appeals. The opinion of the surrogate is as follows:

“ The decedent died subsequent to May 15, 1916, so that the amendment to the tax law of that year, Chapter 548, which became a law and went into effect on that date applies to this case. Upon transfer tax proceedings it appeared that the net value of the estate was \$1,646.19; that the legacy given to one Loren Van Volkenburg, amounting to \$647.54, is the only taxable bequest. The order of the Surrogate assessing the tax allowed an exemption of \$500, assessing only the excess of \$147.54 upon which a tax of 5 per cent. was levied amounting to \$7.37.

“ From this order the comptroller has appealed, claiming that no exemption should have been allowed, but that the tax of 5 per cent. should have been levied upon the whole amount of the legacy.

“ It seems to me that appellant's position is untenable. His contention seems to be based upon the decision construing the amendment of 1910 (Chapter 706) in *Matter of Mason*, 69 Misc. 280. The language used in that statute is very different from that used in the amendment under consideration; there the statute reads: “ If * * * of more than five hundred dollars it shall be taxable under this article. &c.”

“ In the amendment of 1916 the statute speaks only of ‘ excess ’; section 221-c. d. 3, applies to this case. It reads, ‘ Upon all transfers taxable under this article of

property or any beneficial interest therein any amount in excess of the value of five hundred dollars to any person or corporation * * * the tax on such transfers shall be at the rate of, &c., &c.'

" Excess is defined by Webster to mean ' the degree or amount by which one thing or number exceeds another; remainder or the difference between two numbers is the excess of one over the other.' So in this statute it seems to be the clear intent of the legislature that only the excess over and above five hundred dollars shall be taxed.

" This language is not new to the statute; it is substantially the same language that was employed in the act of 1911 (Chap. 732) under which exemptions of \$5,000 to the near relatives and \$1,000 to collaterals and strangers have been allowed without question and I can not see or find any authority or justification for the contention now taken by the appellant.

" It is contended that putting the exemption of \$5,000 in certain cases in Section 221 shows an intent on the part of the legislature not to exempt a legatee enumerated in s. d. 3 of section 221-a; in other words that there is no exemption given to a legatee of that class unless his legacy does not exceed \$500. That would put the legislature in the light of saying that a legatee, who receives a bequest of \$500 or less, is exempt, but the legatee who receives a bequest of \$501 must pay a tax of \$25.00. I do not believe such was the intention; but it seems to me the intent of the act is that the tax should be levied only upon the excess over and above the sum of \$500 in all cases except those enumerated in s. d. 1 of section 221, in which the exemption of \$5,000 is allowed, and I cannot see how the placing of certain cases among the list of positive exemptions in section 221 changes the intent to be gathered from the language employed; and the provision of law imposing these transfer taxes (section 220) is subject to the

provisions of section 221 and section 221a whether they are called exemptions or limitations.

The order appealed from must be affirmed. An order may be entered accordingly."

In support of his contention the comptroller cited:

Matter of Mason, 69 Misc. 280; 126 Supp. 998.

Matter of Haley, 89 Misc. 22; 152 Supp. 432.

Matter of Dehnhardt, N. Y. L. J., April 7, 1916.

These authorities all arose under the statute of 1910; but it has thus far been held that the act of 1916 has not accomplished the purpose of restoring that statute, which was at least the intention of the comptroller, though it failed to express itself under the decision in the *Bunce* case which is now before the Court of Appeals. It was certainly the intention of those who advocated the statute to restore the law to the exemptions of 1910 which had not only been construed in this state but had been adopted in other jurisdictions.

Harriott v. Bacon, 110 La. 342; 81 N. W. 701.

Stelwagen v. Durfee, 130 Mich. 166; 89 N. W. 728.

Matter of Howell, 147 Pa. St. 164; 23 A. 403.

Dixon v. Rickerts, 26 Utah 215; 72 Pac. 947.

As the matter stands, if the decision in the *Bunce* case is sustained in the Court of Appeals, the construction of the statute remains unchanged as established by the authorities:

Matter of Jourdan, 151 App. Div. 8; 135 Supp. 878 reversed on dissenting opinion, 206 N. Y. 653.

Matter of Schwarz, 156 App. Div. 931; 141 Supp. 349; aff. 209 N. Y. mem.

Matter of Eaton, 79 Misc. 69; 140 Supp. 601.

Matter of Kip, N. Y. L. J., March 28, 1912.

These authorities overrule

Matter of Elletson, 75 Misc. 582; 136 Supp. 455.

k. AMENDMENTS OF 1917.

These are of minor importance and may be briefly summarized as follows:

Chapter 53 adds to the list of exemptions real estate devised to a municipal corporation in trust for a specified purpose.

Chapter 128 provides for the remission of interest when the tax has been paid by mistake to the county treasurer instead of the state comptroller.

Chapter 194 affects the salary of the transfer tax clerk in Onondaga county.

Chapter 481 raises the salary of the transfer tax clerk in Queens county.

Chapter 482 increases the salary of appraisers in Erie and Suffolk counties.

Chapter 700 adds Sec. 221-b, which imposes a penalty upon estates of decedents who have not complied with the provisions of the tax law with regard to secured debts.

4. Text of The New York Statute with Amendments to Date.

Article 10 of the Tax Law, Chapter 62, Laws 1909, as amended.

ARTICLE 10

Taxable Transfers

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§ 220. Taxable transfers. A tax shall be and is hereby imposed upon the transfer of any tangible property within the state and of intangible property, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations in the following cases, subject to the exemptions and limitations hereinafter prescribed:

1. When the transfer is by will or by the intestate laws of this state of any intangible property, or of tangible property within the state, from any person dying seized or possessed thereof while a resident of the state.

2. When the transfer is by will or intestate law, of tangible property within the state or of any intangible property, if evidenced by or consisting of shares of stock, bonds, notes or other evidences of interest in any corporation, joint stock company or association wherever incorporated or organized, except a corporation, foreign or domestic, or joint stock company or association constituting, being or in the nature of a moneyed corporation, a railroad or transportation corporation, or a public service or manufacturing corporation as defined and classified by the laws of this state, and the property represented by such shares of stock, bonds, notes or other evidences of interest consist of real property which is located, wholly or partly, within the state of New York, or of an interest in any partnership business conducted, wholly or partly, within the state of New York, in such proportion as the value of the real property of such corporation, joint stock company or association, as the value of the entire property of such partnership located in the state of New York bears to the value of the entire property of such corporation, joint stock company or association or partnership, and the decedent was a nonresident of the state at the time of his death; or when the transfer is by will or intestate law of capital invested in business in the state by a non-resident of the state doing business in the state either as principal or partner.

3. Whenever the property of a resident decedent, or the property of a nonresident decedent within this state, transferred by will is not specifically bequeathed or devised, such property shall, for the purposes of this article, be deemed to be transferred proportionately to and divided pro rata among all the general legatees and devisees named in said decedent's will, including all transfers under a residuary clause of such will.

4. When the transfer is of intangible property, or of

tangible property within the state, made by a resident, or of tangible property within the state or of any intangible property, if evidenced by or consisting of shares of stock, bonds, notes or other evidences of interest in any corporation, joint stock company or association wherever incorporated or organized, except a corporation, foreign or domestic, or joint stock company or association constituting, being or in the nature of a moneyed corporation, a railroad or transportation corporation, or a public service or manufacturing corporation as defined and classified by the laws of this state, and the property represented by such shares of stock, bonds, notes or other evidences of interest consists of real property which is located, wholly or partly, within the state of New York, or of an interest in any partnership business conducted, wholly or partly, within the state of New York, in such proportion as the value of the real property of such corporation, joint stock company or association, or as the value of the entire property of such partnership located in the state of New York bears to the value of the entire property of such corporation, joint stock company or association or partnership made by a nonresident or capital invested in business in the state by a nonresident of the state doing business in the state either as principal or partner by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor or intended to take effect in possession or enjoyment at or after such death.

5. When any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer whether made before or after the passage of this chapter.

6. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this chapter, such appointment when made shall be deemed a

transfer taxable under the provisions of this chapter in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will.

7. Whenever property is held in the joint names of two or more persons, or as tenants by the entirety, or is deposited in banks or other institutions or depositaries in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased tenant by the entirety, joint tenant or joint depositor and had been bequeathed to the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, by such deceased tenant by the entirety, joint tenant or joint depositor by will.

8. The tax imposed hereby shall be upon the clear market value of such property, at the rates hereinafter prescribed.

[As amended by chap. 706, L. 1910; chap. 732, L. 1911; chap. 664, L. 1915; chap. 323, L. 1916.]

§ 221. **Exceptions and limitations.** Any property devised or bequeathed for religious ceremonies, observances or commemorative services of or for the deceased donor, or to any person who is a bishop or to any religious, educational, charitable, missionary, benevolent, hospital or infirmary corporation, wherever incorporated, including corporations organized exclusively for bible or tract purposes and corporations organized for the enforcement of laws relating to children or animals, or real property to a

municipal corporation in trust for a specific public purpose, shall be exempted from and not subject to the provisions of this article. There shall also be exempted from and not subject to the provisions of this article personal property other than money or securities bequeathed to a corporation or association wherever incorporated or located, organized exclusively for the moral or mental improvement of men or women or for scientific, literary, library, patriotic, cemetery or historical purposes or for two or more of such purposes and used exclusively for carrying out one or more of such purposes. But no such corporation or association shall be entitled to such exemption if any officer, member or employee thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof except reasonable compensation for services in effecting one or more of such purposes or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purpose be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association or for any of its members or employees or if it be not in good faith organized or conducted exclusively for one or more of such purposes. There shall also be exempted from and not subject to the provisions of this article all property or any beneficial interest therein so transferred to any father, mother, husband, wife, widow or child of the decedent, grantor, donor or vendor if the amount of the transfers to such father, mother, husband, wife, widow or child is the sum of five thousand dollars or less; but if the amount so transferred to any father, mother, husband, wife, widow or child is over five thousand dollars, the excess above these amounts, respectively, shall be taxable at the rates set forth in the next section.

The provisions of section two hundred and twenty-one,

as amended by this act, shall apply to real property heretofore devised to a village in trust for street purposes; and any tax which may heretofore have been fixed or imposed, under article ten of the tax law, on account of such transfer of real property subsequent to the twenty-sixth day of March, nineteen hundred and thirteen, is hereby rescinded and revoked.

[As amended by chaps. 600 and 706, L. 1910; chap. 732, L. 1911; chap. 206, L. 1912; chaps. 356 and 795, L. 1913; chap. 548, L. 1916, and chap. 534, L. 1917.]

§ 221-a. Rates of tax. 1. Upon all transfers taxable under this article of property or any beneficial interest therein in excess of the value of five thousand dollars, to any father, mother, husband, wife, or child of the decedent, grantor, donor or vendor, or to any child adopted as such in conformity with the laws of this state, of the decedent, grantor, donor or vendor, or upon all transfers taxable under this article of property or any beneficial interest therein in excess of the value of five hundred dollars to any lineal descendant of the decedent, grantor, donor or vendor, born in lawful wedlock, the tax on such transfers shall be at the rate of

One per centum on any amount up to and including the sum of twenty-five thousand dollars;

Two per centum on the next seventy-five thousand dollars or any part thereof;

Three per centum on the next one hundred thousand dollars or any part thereof;

Four per centum on the amount representing the balance of each individual transfer.

2. Upon all transfers taxable under this article of property or any beneficial interest therein in excess of the value of five hundred dollars or more, to a brother, sister, wife or widow of a son, or the husband of a daughter of the decedent, grantor, donor or vendor, or to any child

to whom any such decedent, grantor, donor or vendor for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter, the tax on such transfers shall be at the rate of

Two per centum on any amount up to and including the sum of twenty-five thousand dollars;

Three per centum on the next seventy-five thousand dollars or any part thereof;

Four per centum on the next one hundred thousand dollars or any part thereof;

Five per centum on the amount representing the balance of each individual transfer.

3. Upon all transfers taxable under this article of property or any beneficial interest therein of an amount in excess of the value of five hundred dollars, to any person or corporation other than those enumerated in paragraphs one and two of this section the tax on such transfers shall be at the rate of

Five per centum on any amount up to and including the sum of twenty-five thousand dollars;

Six per centum on the next seventy-five thousand dollars or any part thereof;

Seven per centum on the next one hundred thousand dollars or any part thereof;

Eight per centum on the amount representing the balance of each individual transfer.

[As amended by chap. 732, L. 1911; chap. 664, L. 1915; chap. 548, L. 1916.]

§ 221-b. **Additional tax on investments in certain cases.** Upon every transfer of an investment, as defined in article fifteen of this chapter, taxable under this article, a tax is hereby imposed, in addition to the tax imposed by

section two hundred and twenty-one-a, of five per centum of the appraised inventory value of such investment, unless the tax on such investment as prescribed by article fifteen of this chapter or the tax on a secured debt as defined by former article fifteen of this chapter shall have been paid on such investment or secured debt and stamp affixed for a period including the date of the death of the decedent or unless the personal representatives of decedent are able to prove that a personal property tax was assessed and paid on such investment or secured debt during the period it was held by decedent; or unless the decedent was actually engaged in the bona fide purchase and sale of investments as a business, and at the time of his death had maintained an office or place of business in this state for the carrying on of the actual bona fide business of purchasing and selling investments, as distinguished from the purchase thereof for investment purposes, and had owned and held such investment for sale for the purpose of his business and not as investment for a period of not more than eight months prior to his death.

[Added by chap. 700, L. 1917.]

§ 221-c. **Exemption of certain personal property.** A transfer of pictures, statuary, works of art, antiques, books, manuscripts or other similar personal property shall be exempted from and not subject to the provisions of this article, if within two years after such transfer the person to whom such transfer is made shall present the same to the state, or to a municipal corporation of the state for educational, scientific, literary, library, or historical purposes; and if the tax thereon shall have been theretofore paid the amount thereof shall be refunded in accordance with the provisions of this article.

[Added by chap. 639, L. 1913.]

§ 222. **Accrual and payment of tax.** All taxes imposed by this article shall be due and payable at the time of the

transfer, except as herein otherwise provided. Taxes upon the transfer of any estate, property or interest therein limited, conditioned, dependent or determinable upon the happening of any contingency or future event by reason of which the fair market value thereof can not be ascertained at the time of the transfer as herein provided, shall accrue and become due and payable when the persons or corporations beneficially entitled thereto shall come into actual possession or enjoyment thereof. Such tax shall be paid to the state comptroller in a county in which the office of appraiser is salaried, and in other counties, to the county treasurer, and said state comptroller or county treasurer shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of such payment as provided in section two hundred and thirty-six.

§ 223. **Discount and interest.** If such tax is paid within six months from the accrual thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accrual thereof, interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax cannot be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged; provided, however, that whenever the payment of any tax imposed by this article and payable to a county treasurer has been heretofore or shall be hereafter tendered, through inadvertence, to the state comptroller within the period of time before interest attaches to said tax, if such tax is paid in full to the treasurer of the proper county

within ten days thereafter, the county treasurer, when directed so to do by the state comptroller, may receipt in full for such tax without collecting any interest imposed thereon by this section of the tax law.

[As amended by chap. 128, L. 1917.]

§ 224. **Lien of tax and collection by executors, administrators and trustees.** Every such tax shall be and remain a lien upon the property transferred until paid and the person to whom the property is so transferred, and the executors, administrators and trustees of every estate so transferred shall be personally liable for such tax until its payment. Every executor, administrator or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such executor, administrator or trustee having in charge or in trust any legacy or property for distribution subject to such tax shall deduct the tax therefrom and shall pay over the same to the state comptroller or county treasurer, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this article to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the executor, administrator or trustee, and the tax shall remain a lien or charge on such real property until paid; and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the legacy might be enforced, or by the district attorney under section two hundred and thirty-five of this chapter.

If any such legacy shall be given in money to any such person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him, to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

§ 225. **Refund of tax erroneously paid.** If any debts shall be proven against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by order of the surrogate having jurisdiction, on notice to the state comptroller, to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the state comptroller or county treasurer; or if such tax has been paid to such state comptroller or county treasurer, such officer shall refund out of the funds in his hands or custody to the credit of such taxes such equitable proportion of the tax, and credit himself with the same in the account required to be rendered by him under this article. If after the payment of any tax in pursuance of an order fixing such tax, made by the surrogate having jurisdiction, such order be modified or reversed by the surrogate having jurisdiction within two years from and after the date of entry of the order fixing the tax, or be modified or reversed at any time on an appeal taken therefrom within the time allowed by law on due notice to the state comptroller, the state comptroller shall, if such tax was paid in a county in which the office of appraiser is salaried, refund to the executor, administrator, trustee, person or persons

by whom such tax was paid, the amount of any moneys paid or deposited on account of such tax in excess of the amount of the tax fixed by the order modified or reversed, out of the funds in his hands or custody to the credit of such taxes, and to credit himself with the same in the account required to be rendered by him under this article, or if paid in a county in which the office of appraiser is not salaried, he shall by warrant direct and allow the county treasurer of the county to refund such amount in the same manner; but no application for such refund shall be made after one year from such reversal or modification, unless an appeal shall be taken therefrom, in which case no such application shall be made after one year from the final determination on such appeal or of an appeal taken therefrom, and the representatives of the estate, legatees, devisees or distributees entitled to any refund under this section shall not be entitled to any interest upon such refund, and the state comptroller shall deduct from the fees allowed by this article to the county treasurer the amount theretofore allowed him upon such overpayment. Where it shall be proved to the satisfaction of the surrogate that deductions for debts were allowed upon the appraisal since proved to have been erroneously allowed, it shall be lawful for such surrogate to enter an order assessing the tax upon the amount wrongfully or erroneously deducted. This section, as amended, shall apply to appeals and proceedings now pending and taxes heretofore paid in relation to which the period of one year from such reversal or modification has not expired when this section, as amended, takes effect.

[As amended by chap. 308, L. 1911.]

§ 226. **Taxes upon devises and bequests in lieu of commissions.** If a testator bequeaths or devises property to one or more executors or trustees in lieu of their commissions or allowances, or makes them his legatees to an

amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed or devised above the amount of commissions or allowances prescribed by law in similar cases shall be taxable under this article.

§ 227. **Liability of certain corporations to tax.** If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the state comptroller or the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or nonresident, or belonging to, or standing in the joint names of such decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the state comptroller at least ten days prior to said delivery or transfer; nor shall any safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock

of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the state comptroller consents thereto in writing. And it shall be lawful for the said state comptroller, personally or by representative, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of not less than five or more than twenty-five thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the state comptroller in any court of competent jurisdiction.

§ 228. **Jurisdiction of the surrogate.** The surrogate's court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under this article, or to appoint a trustee of such

estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this article, and to do any act in relation thereto authorized by law to be done by a surrogate in other matters or proceedings coming within his jurisdiction; and if two or more surrogates' courts shall be entitled to exercise any such jurisdiction, the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other surrogate. Every petition for ancillary letters testamentary or ancillary letters of administration made in pursuance of the provisions of article seven, title three, chapter eighteen of the code of civil procedure shall set forth the name of the state comptroller as a person to be cited as therein prescribed, and a true and correct statement of all the decedent's property in this state and the value thereof; and upon the presentation thereof the surrogate shall issue a citation directed to the state comptroller; and upon the return of the citation the surrogate shall determine the amount of the tax which may be or become due under the provisions of this article and his decree awarding the letters may contain any provision for the payment of such tax or the giving of security therefor which might be made by such surrogate if the state comptroller were a creditor of the decedent.

§ 229. **Appointment of appraisers, stenographers and clerks.** The state comptroller shall appoint and may at pleasure remove not to exceed six persons in the county of New York, four persons in the counties of Kings and Bronx, and one person in the counties of Albany, Dutchess, Erie, Monroe, Nassau, Niagara, Oneida, Onondaga, Orange, Queens, Rensselaer, Richmond, Suffolk, Chautauqua and Westchester, to act as appraisers therein. The state comptroller, from time to time and whenever in his

opinion it is necessary, may also appoint and at pleasure remove not to exceed two additional persons to act as transfer tax appraisers in the county of New York, to whom shall be referred the appraisal of delinquent estates pending, before the transfer tax appraisers in New York county, where more than eighteen months have elapsed since the death of such decedents, respectively, and also to act as appraiser of other estates whenever it shall appear to the comptroller that the services of such additional appraiser is necessary. The appraisers so appointed shall receive an annual salary to be fixed by the state comptroller, together with their actual and necessary traveling expenses and witness fees, as hereinafter provided, payable monthly by the state comptroller out of any funds in his hands or custody on account of transfer tax. The salaries of each of the appraisers so appointed shall not exceed the following amounts: In New York county, four thousand dollars; in Kings, Bronx and Erie counties, four thousand dollars; in Albany, Queens and Westchester counties, three thousand dollars; in Onondaga county, two thousand five hundred dollars; in Nassau, Orange, Rensselaer and Suffolk counties, two thousand dollars; in Monroe and Oneida counties, one thousand five hundred dollars; in Chautauqua county, twelve hundred dollars; in Dutchess, Niagara and Richmond counties, one thousand dollars. Each of the said appraisers shall file with the state comptroller his oath of office and his official bond in the penal sum of not less than one thousand dollars, in the discretion of the state comptroller, conditioned for the faithful performance of his duties as such appraiser, which bond shall be approved by the attorney-general and the state comptroller. The state comptroller shall retain out of any funds in his hands on account of said tax the following amounts: First, a sum sufficient to provide the appraisers of New York

county with one managing clerk, at a salary not to exceed four thousand dollars a year, whose duties shall be prescribed by the state comptroller, nine stenographers, three clerks, one examiner of values, and one assistant examiner of values, whose salaries shall not exceed two thousand dollars a year each, and one junior clerk, whose salary shall not exceed six hundred dollars a year; the appraisers of Kings and Bronx counties, with four stenographers, whose salaries shall not exceed two thousand dollars a year each, one clerk, whose salary shall not exceed one thousand five hundred dollars a year, one page whose salary shall not exceed four hundred and eighty dollars a year, and the appraiser of Erie county with one clerk, whose salary shall not exceed fifteen hundred dollars a year, and the appraiser of Westchester county with one clerk, whose salary shall not exceed the sum of twelve hundred dollars a year, and the appraiser of Queens county with one clerk, whose salary shall not exceed the sum of fifteen hundred dollars a year, and the appraiser of Oneida county with one stenographer, whose salary shall not exceed the sum of nine hundred dollars a year, such employees to be appointed by the state comptroller. The state comptroller shall also retain out of any funds in his hands on account of said tax a sum sufficient to provide each of the additional transfer tax appraisers in New York county, whenever appointed as hereinbefore provided, with a stenographer, whose salary shall not exceed the rate of two thousand dollars a year, such employees to be appointed by the state comptroller. Second, a sum to be used in defraying the expenses for office rent, stationery, postage, process serving and other similar expenses necessarily incurred in the appraisal of estates, not exceeding fifteen thousand dollars a year in New York county, five thousand dollars a year in Kings

and Bronx counties and one thousand dollars a year in Erie and Queens counties.

[As amended by chap. 283, L. 1909; chap. 706, L. 1910; chap. 803, L. 1911; chap. 214, L. 1912; chap. 366, L. 1913; chap. 383, L. 1915; chaps. 80 and 549, L. 1916, and chap. 482, L. 1917.]

§ 230. **Proceedings by appraiser.** In each county in which the office of appraiser is not salaried the county treasurer shall act as appraiser. The surrogate, either upon his own motion, or upon the application of any interested person, including the state comptroller, shall by order direct the person or one of the persons appointed pursuant to section two hundred and twenty-nine of this article in counties in which the office of appraiser is salaried, and in other counties, the county treasurer, to fix the fair market value of property of persons whose estates shall be subject to the payment of any tax imposed by this article.

Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the state comptroller, and to such persons as the surrogate may by order direct, of the time and place when he will appraise such property. He shall at such time and place appraise the same at its fair market value as herein prescribed; and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said surrogate, together with the depositions of the witnesses examined, and such other facts in relation thereto and to said matter as the surrogate may order or require. Every appraiser, except in the counties in which the office of appraiser is salaried, for which provision is hereinbefore made, shall be paid

by the state comptroller and after the audit of said state comptroller, his actual and necessary traveling expenses and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, payment to be made out of the funds in the hands of the county treasurer of the proper county on account of the tax imposed under the provisions of this article.

The value of every future or limited estate, income, interest or annuity for any life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computation shall be five per centum per annum.

In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent incumbrance thereon, nor on account of any contingency upon the happenings of which the estate or property or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall

be made in the manner provided by section two hundred and twenty-five of this article.

Where any property shall, after the passage of this chapter, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this article in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interest is derived

When property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred, and the surrogate shall enter a temporary order determining the amount of said tax in accordance with this provision; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this article, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this article;

and the executor or trustee of each estate, or the legal representative having charge of the trust fund, shall immediately upon the happening of said contingencies or conditions apply to the surrogate of the proper county, upon the verified petition setting forth all the facts, and giving at least ten days' notice by mail to all interested persons or corporations, for an order modifying the temporary taxing order of said surrogate so as to provide for the final assessment and determination of the tax in accordance with the ultimate transfer or devolution of said property. Such return of overpayment shall be made in the manner provided by section two hundred and twenty-five of this article.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

The report of the appraiser shall be made in duplicate, one of which duplicates shall be filed in the office of the surrogate and the other in the office of the state comptroller.

[As amended by chap. 800; L. 1911; chap. 550, L. 1916.]

§ 231. Determination of surrogate. From such report of appraisal and other proof relating to any such estate before the surrogate, the surrogate shall forthwith, as of course, determine the cash value of all estates and the

amount of tax to which the same are liable; or the surrogate may so determine the cash value of all such estates and the amount of tax to which the same are liable, without appointing an appraiser.

The superintendent of insurance shall, on the application of any surrogate, determine the value of any such future or contingent estates, income or interest therein limited for the life or lives of persons in being, upon the facts contained in any such appraiser's report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct.

The surrogate shall immediately give notice, upon the determination by him as to the value of any estate which is taxable under this article, and of the tax to which it is liable, to all persons known to be interested therein, and shall immediately forward a copy of such taxing order to the state comptroller. The surrogate shall also forward to the state comptroller copies of all orders entered by him in relation to or affecting in any way the transfer tax on any estate, including orders of exemption.

If, however, it appear at any stage of the proceedings that any of such persons known to be interested in the estate is an infant or an incompetent, the surrogate may, if the interest of such infant or incompetent is presently involved and is adverse to that of any of the other persons interested therein, appoint a special guardian of such infant; but nothing in this provision shall affect the right of an infant over fourteen years of age or of any one on behalf of an infant under fourteen years of age to nominate and apply for the appointment of a special guardian for such infant at any stage of the proceedings.

[As amended by chap. 550, L. 1916.]

§ 232. **Appeal and other proceedings.** The state comptroller or any person dissatisfied with the appraisement

or assessment and determination of tax may appeal therefrom to the surrogate within sixty days from the fixing, assessing and determination of tax by the surrogate as herein provided, upon filing in the office of the surrogate a written notice of appeal, which shall state the grounds upon which the appeal is taken; but no costs shall be allowed by the surrogate on such appeal.

Within two years after the entry of an order or decree of a surrogate determining the value of an estate and assessing the tax thereon, the state comptroller may, if he believes that such appraisal, assessment or determination has been fraudulently, collusively or erroneously made, make application to a justice of the supreme court of the judicial district embracing the surrogate's court in which the order or decree has been filed, for a reappraisal thereof. The justice to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers and be subject to the duties of an appraiser under section two hundred and thirty and shall receive compensation at the rate of five dollars per day for every day actually and necessarily employed in such appraisal. Such compensation shall be payable by the state comptroller or county treasurer out of any funds he may have on account of any tax imposed under the provisions of this article, upon the certificate of the justice appointing him. The report of such appraiser shall be filed with the justice by whom he was appointed, and thereafter the same proceedings shall be taken and had by and before such justice as are herein provided to be taken and had by and before the surrogate. The determination and assessment of such justice shall supersede the determination and assessment of the surrogate, and shall be filed by such justice in the office of the state comptroller, and a certified copy thereof transmitted to the surrogate's court of the proper county.

§ 233. Composition of transfer tax upon certain estates.

The state comptroller, by and with the consent of the attorney-general expressed in writing, is hereby empowered and authorized to enter into an agreement with the trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and circumstanced, that the taxes therein were held not presently payable, or where the interests of the legatees or devisees were not ascertainable under the provisions of chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five; chapter three hundred and ninety-nine of the laws of eighteen hundred and ninety-two, or chapter nine hundred and eight of the laws of eighteen hundred and ninety-six, and the several acts amendatory thereof and supplemental thereto; and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said trustees upon the payment of the taxes provided for in such composition, provided, however, that no such composition shall be conclusive in favor of said trustees as against the interest of such *cestuis que trust* as may possess either present right of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian or committee. Composition or settlement made or effected under the provisions of this section shall be executed in triplicate, and one copy filed in the office of the state comptroller, one copy in the office of the surrogate of the county in which the tax was paid, and one copy delivered to the executors, administrators or trustees who shall be parties thereto.

§ 234. Surrogate's assistants in New York, Kings and other counties. The state comptroller may, upon the

recommendation of the surrogate, appoint, and may at pleasure remove, assistants and clerks in the surrogate's offices of the following counties, at annual salaries to be fixed by him not to exceed the amounts hereinafter specified:

1. In New York county, a transfer tax assistant, five thousand dollars; a transfer tax clerk, two thousand and four hundred dollars; an assistant clerk, eighteen hundred dollars; a recording clerk, thirteen hundred dollars; a stenographer, twelve hundred dollars; and shall be entitled to expend not more than seven hundred and fifty dollars a year in such office for expenses necessarily incurred in the assessment and collection of taxes under this article.

2. In Kings county, a transfer tax assistant, four thousand dollars; a deputy transfer tax assistant, three thousand dollars; three transfer tax clerks, one at a salary of two thousand dollars, one at a salary of fifteen hundred dollars and one at a salary of one thousand dollars; and shall be entitled to expend not more than five hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article. The assistant clerk now in office shall continue in office as transfer tax clerk at the salary of fifteen hundred dollars.

3. In Erie county, a transfer tax clerk, eighteen hundred dollars.

4. In Westchester county, a transfer tax assistant, two thousand five hundred dollars.

5. In Albany county, a transfer tax clerk, fifteen hundred dollars.

6. In Queens county, transfer tax clerk, fifteen hundred dollars.

7. In Onondaga county, a transfer tax clerk, fifteen hundred dollars; and shall be entitled to expend not more than two hundred dollars a year for expenses necessarily

incurred in the assessment and collection of taxes under this article.

8. In Monroe county, two transfer tax clerks, one thousand dollars each; and shall be entitled to expend not more than two hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article.

9. In Dutchess county, a transfer tax clerk, nine hundred dollars.

10. In Oneida county, not more than two transfer tax clerks, twelve hundred dollars in the aggregate.

11. In Suffolk county, a transfer tax clerk, one thousand dollars.

12. In Ulster county, a transfer tax clerk, seven hundred and twenty dollars.

13. In Richmond county, a transfer tax clerk, one thousand dollars.

14. In Nassau county, a transfer tax clerk, twelve hundred dollars.

15. In Bronx county, a transfer tax assistant, two thousand dollars.

Such salaries and expenses shall be paid monthly by the state comptroller, upon proper vouchers, out of any funds in his hands on account of taxes collected under this article.

[As amended by chap. 70, L. 1910; chaps. 160, 681, 744, L. 1910; chap. 45, L. 1912; chap. 429, L. 1913; chaps. 562, 582, L. 1916, and chap. 194, L. 1917.]

§ 235. **Proceedings by district attorneys.** If, after the expiration of eighteen months from the accrual of any tax under this article, such tax shall remain due and unpaid, after the refusal or neglect of the persons liable therefor to pay the same, the state comptroller shall notify the district attorney of the county, in writing, of such failure or neglect, and such district attorney shall apply to the

surrogate's court for a citation, citing the persons liable to pay such tax to appear before the court on the day specified, not more than three months after the date of such citation, and show cause why the tax should not be paid. The surrogate, upon such application, and whenever it shall appear to him that any such tax accruing under this article has not been paid as required by law, shall issue such citation, and the service of such citation, and the time, manner and proof thereof, and the hearing and determination thereon and the enforcement of the determination or order made by the surrogate shall conform to the provisions of the code of civil procedure for the service of citations out of the surrogate's court, and the hearing and determination thereon and its enforcement so far as the same may be applicable. The surrogate or his clerk shall, upon request of the district attorney or the state comptroller, furnish, without fee, one or more transcripts of such decree, which shall be docketed and filed by the county clerk of any county of the state without fee, in the same manner and with the same effect as provided by law for filing and docketing transcripts of decrees of the surrogate's court. The costs awarded by any such decree after the collection and payment of the tax to the state comptroller or county treasurer may be retained by the district attorney for his own use. Such costs shall be fixed by the surrogate in his discretion, but shall not exceed in any case where there has not been a contest, the sum of one hundred dollars, or where there has been a contest, the sum of two hundred and fifty dollars. Whenever the surrogate shall certify that there was probable cause for issuing a citation and taking the proceedings specified in this section, the state comptroller, after the same shall have been audited by him, shall pay all expenses incurred for the service of citations and other lawful disbursements not otherwise paid, from funds in his hands on

account of such tax, or in a county in which the office of appraiser is not salaried, by a warrant upon the county treasurer of such county for the payment by him of the same from funds in his hands on account of such tax. In proceedings to which the state comptroller is cited as a party under sections two hundred and twenty-eight and two hundred and thirty of this article, he is authorized to designate and retain counsel to represent him and to pay the expenses thereby incurred out of the funds which may be in his hands on account of this tax in any case in a county where the office of appraiser is salaried, and in any other county the state comptroller shall by warrant direct the county treasurer to pay such expenses out of any funds which may be in his hands on account of this tax; provided, however, that in the collection of taxes upon estates of non-resident decedents the state comptroller shall not allow for legal services up to and including the entry of the order of the surrogate fixing the tax a sum exceeding ten per centum of the taxes and penalties collected.

§ 236. **Receipts from county treasurer or comptroller.** One of the duplicate receipts issued for the payment of any tax under this article, as provided by section two hundred and twenty-two, shall be countersigned by the state treasurer if the same was issued by the state comptroller, and by the state comptroller if issued by any county treasurer. The officer so countersigning the same shall charge the officer receiving the tax with the amount thereof and affix the seal of his office to the same and return to the proper person; but no executor, administrator or trustee shall be entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of this article unless he shall produce a receipt so sealed and countersigned, or a certified copy thereof.

Any person shall, upon the payment of fifty cents to the officer issuing such receipt, be entitled to a duplicate thereof, to be signed, sealed and countersigned in the same manner as the original.

Any person shall, upon the payment of fifty cents, be entitled to a certificate of the state comptroller that the tax upon the transfer of any real estate of which any decedent died seized has been paid, such certificate to designate the real property upon which such tax is paid, the name of the person so paying the same, and whether in full of such tax. Such certificate may be recorded in the office of the county clerk or register of the county where such real property is situate, in a book to be kept by him for that purpose, which shall be labeled "transfer tax."

§ 237. **Fees of county treasurer.** The treasurer of each county in which the office of appraiser is not salaried shall be allowed to retain, on all taxes paid and accounted for by him each fiscal year under this article, five per centum on the first fifty thousand dollars, two and one-half per centum on the next fifty thousand dollars, and one per centum on all additional sums. Such fees shall be in addition to the salaries and fees now allowed by law to such officers.

§ 238. **Books and forms to be furnished by the state comptroller.** The state comptroller shall furnish to each surrogate a book, which shall be a public record, and in which he shall enter the name of every decedent upon whose estate an application to him has been made for the issue of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, the estimated value of his real and personal property, the names, places of residence and relationship to him of his heirs-at-law, the names and places of residence of the legatees and devisees in any will of any such

decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The surrogate shall also enter in such book the amount of the personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by him under this article, and the value of annuities, life estates, terms of years, and other property of any such decedent or given by him in his will or otherwise, as fixed by the surrogate, and the tax assessed thereon, and the amounts of any receipts for payment of any tax on the estate of such decedent under this article filed with him. The state comptroller shall also furnish to each surrogate forms for the reports to be made by such surrogate, which shall correspond with the entries to be made in such book.

§ 239. **Reports of surrogate and county clerk.** Each surrogate shall, on January, April, July and October first of each year, make a report, upon the forms furnished by the comptroller containing all the data and matters required to be entered in such book, which shall be immediately forwarded to the state comptroller. The county clerk of each county, except in the counties where the registers perform the duties of the county clerk with respect to the recording of deeds, and when in such counties the registers, shall, at the same times, make reports containing a statement of any deed or other conveyance filed or recorded in his office, of any property, which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, with the name and place of residence of such grantor or vendor, the name and place of residence of the grantee or vendee, and a description of the property

transferred, which shall be immediately forwarded to the state comptroller.

§ 240. **Reports of county treasurer.** Each county treasurer in a county in which the office of appraiser is not salaried shall make a report, under oath, to the state comptroller, on January, April, July and October first of each year, of all taxes received by him under this article, stating for what estate and by whom and when paid. The form of such report may be prescribed by the state comptroller. He shall, at the same time, pay the state treasurer all taxes received by him under this article and not previously paid into the state treasury, except as provided in the next section, and for all such taxes collected by him and not paid into the state treasury within thirty days from the times herein required, he shall pay interest at the rate of ten per centum per annum.

[As amended by chap. 800, L. 1911.]

§ 241. **Report of state comptroller, payment of taxes; refunds in certain cases.** The state comptroller shall deposit all taxes collected by him under this article, except as hereinafter otherwise provided, in a responsible bank, banking house or trust company in the city of Albany, which shall pay the highest rate of interest to the state for such deposit, to the credit of the state comptroller on account of the transfer tax. And every such bank, banking house or trust company shall execute and file in his office an undertaking to the state, in the sum, and with such sureties, as are required and approved by the comptroller, for the safe keeping and prompt payment on legal demand therefor of all such moneys held by or on deposit in such bank, banking house or trust company, with interest thereon on daily balances at such rate as the comptroller may fix. Every such undertaking shall have indorsed thereon, or annexed thereto, the approval of the

attorney-general as to its form. The state comptroller shall on the first day of each month make a verified return to the state treasurer of all taxes received by him under this article, stating for what estate, and by whom and when paid; and shall credit himself with all expenditures made since his last previous return on account of such taxes, for salary, refunds or other purposes lawfully chargeable thereto. He shall on or before the tenth day of each month pay to the state treasurer the balance of such taxes remaining in his hands at the close of business on the last day of the previous month, as appears from such returns.

Whenever the tax on a contingent remainder has been determined at the highest rate which on the happening of any of said contingencies or conditions would be possible under the provisions of this article, the state comptroller, in the counties wherein this tax is payable direct to him, and in all other counties the treasurer of said counties, respectively, when such tax is paid shall retain and hold to the credit of said estate so much of the tax assessed upon such contingent remainders as represents the difference between the tax at the highest rate and the tax upon such remainders which would be due if the contingencies or conditions had happened at the date of the appraisal of said estate, and the state comptroller or the county treasurer shall deposit the amount of tax so retained in some solvent trust company or trust companies or savings banks in this state, to the credit of such estate, paying the interest thereon when collected by him to the executor or trustee of said estate, to be applied by said executor or trustee as provided by the decedent's will. Upon the happening of the contingencies or conditions whereby the remainder ultimately vests in possession, if the remainder then passes to persons taxable at the highest rate, the state comptroller or the county treasurer

shall turn over the amount so retained by him to the state treasurer as provided herein and by section two hundred and forty of this article, or if the remainder ultimately vests in persons taxable at a lower rate or a person or corporation exempt from taxation by the provisions of this article, the state comptroller or the county treasurer shall refund any excess of tax so held by him to the executor or trustee of the estate, to be disposed of by said executor or trustee as provided by the decedent's will. Executors or trustees of any estate may elect to assign to and deposit with the state comptroller or the county treasurer, bonds or other securities of the estate approved by the state comptroller, or the county treasurer, both as to the form of the collateral and the amount thereof, for the purpose of securing the payment of the difference between the tax on said remainder at the highest rate and the tax upon said remainder which would be due if the contingencies or conditions had happened at the date of the appraisal of said estate, and cash for the balance of said tax as assessed, which said bonds or other securities shall be held by the state comptroller, or the county treasurer, to the credit of said estate until the actual vesting of said remainders, the income therefrom when received by the state comptroller or the county treasurer to be paid over to the executor or trustee during the continuance of the trust estates and then to be finally disposed of in accordance with the ultimate transfer or devolution of said remainders as hereinbefore provided; and it shall be the duty of the executors or trustees of such estates to forthwith notify the state comptroller of the actual vesting of all such contingent remainders.

If any executor or trustee shall have deposited with the state comptroller, or the county treasurer, cash or securities, or both cash and securities, to an amount in excess of the sum necessary to pay the transfer tax upon such con-

tingent remainders at the highest rate as aforesaid, the excess of tax so deposited shall be returned to the executor or trustee, or if any executor or trustee shall have deposited with the state comptroller, or the county treasurer, cash or securities, or both cash and securities, to an amount less than is sufficient to pay the tax upon such contingent remainders as finally assessed and determined, the executor or trustee of said estate shall forthwith, upon the entry of the order determining the correct amount of tax due, pay to the state comptroller, or the county treasurer, whichever is entitled under the provisions of this article to receive the tax, the balance due on account of said tax.

[As amended by chap. 800, L. 1910.]

§ 242. **Application of taxes.** All taxes levied and collected under this article when paid into the treasury of the state shall be applicable to the expenses of the state government and to such other purposes as the legislature shall by law direct.

§ 243. **Definitions.** The word “estate” and “property,” as used in this article, shall be taken to mean the property or interest therein passing or transferred to individuals or corporate legatees, devisees, heirs, next of kin, grantees, donees or vendees, and not as the property or interest therein of the decedent, grantor, donor or vendor and shall include all property or interest therein, whether situated within or without this state. The words “tangible property” as used in this article shall be taken to mean corporeal property such as real estate and goods, wares and merchandise, and shall not be taken to mean money, deposits in bank, shares of stock, bonds, notes, credits or evidences of an interest in property and evidences of debt. The words “intangible property” as used in this article shall be taken to mean incorporeal

property, including money, deposits in bank, shares of stock, bonds, notes, credits, evidences of an interest in property and evidences of debt. The word "transfer," as used in this article, shall be taken to include the passing of property or any interest therein in the possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift in the manner herein prescribed. The words "county treasurer" and "district attorney" as used in this article, shall be taken to mean the treasurer or the district attorney of the county of the surrogate having jurisdiction as provided in section two hundred and twenty-eight of this article. The words "intestate laws of this state," as used in this article, shall be taken to refer to all transfers of property, or any beneficial interest therein, effected by the statute of descent and distribution and the transfer of any property, or any beneficial interest therein, effected by operation of law upon the death of a person omitting to make a valid disposition thereof, including a husband's right as tenant by the curtesy or the right of a husband to succeed to the personal property of his wife who dies intestate leaving no descendants her surviving.

For any and all purposes of this article and for the just imposition of the transfer tax, every person shall be deemed to have died a resident, and not a nonresident, of the state of New York, if and when such person shall have dwelt or shall have lodged in this state during and for the greater part of any period of twelve consecutive months in the twenty-four months next preceding his or her death; and also if and when by formal written instrument executed within one year prior to his or her death or by last will he or she shall have declared himself or herself to be a resident or a citizen of this state, notwithstanding that from time to time during such twenty-four months such person may have sojourned outside of this state and

whether or not such person may or may not have voted or have been entitled to vote or have been assessed for taxes in this state; and also if and when such person shall have been a citizen of New York sojourning outside of this state. The burden of proof in a transfer tax proceeding shall be upon those claiming exemption by reason of the alleged non-residence of the deceased. The wife of any person who would be deemed a resident under this section shall also be deemed a resident and her estate subject to the payment of a transfer tax as herein provided, unless said wife has a domicile separate from him.

[As amended by chap. 706, L. 1910; chap. 732, L. 1911; chap. 551, L. 1916.]

§ 244. **Exemptions in article one not applicable.** The exemptions enumerated in section four of this chapter shall not be construed as being applicable in any manner to the provisions of this article.

§ 245. **Limitation of time.** The provisions of the code of civil procedure relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by this article, and this section shall be construed as having been in effect as of date of the original enactment of the inheritance tax law, provided, however, that as to real estate in the hands of bona fide purchasers, the transfer tax shall be presumed to be paid and cease to be a lien as against such purchasers after the expiration of six years from the date of accrual.

APPENDIX.

Forms.

Decedent Estate Law with Consolidator's Notes and index.

Inheritance Tax statutes of All the States Carefully Abstracted and Digested.

FORMS.

ORDER APPOINTING APPRAISER.

The Forms in New York State have largely been standardized from Judge McElroy's excellent work on the Transfer Tax Law, and such forms as have not been given in the text are here set forth from "McElroy on the Transfer Tax Law."

SURROGATE'S COURT — COUNTY OF

IN THE MATTER OF THE TRANSFER TAX UPON
ESTATE OF
....., DECEASED.

On reading and filing the petition of (*executor or administrator*) of, etc., of said decedent, Esq., who is a person (*appointed by the Comptroller or designated by statute*) to act as appraiser in this proceeding, to fix the fair market value at the time of the transfer, of the property of the above-named decedent which is subject to the payment of any tax imposed by article X of chapter 908 of the Laws of 1896, and the acts amendatory thereof and supplemental thereto. (*Also any other facts in relation thereto which the surrogate may desire the appraiser to report upon should be stated here.*)

.....,
Surrogate.

OATH OF APPRAISER.

(§ 230, Tax Law.)

SURROGATE'S COURT — COUNTY OF

IN THE MATTER OF THE APPRAISAL OF THE ESTATE
OF
....., DECEASED,
UNDER THE ACTS IN RELATION TO THE TAXABLE
TRANSFERS OF PROPERTY.

STATE OF NEW YORK, } ss.:
County of, }

....., being duly sworn, says: I am the person directed to appraise the property of the above-named decedent by order of Hon., surrogate of the county of, State of New York, by order dated the day of, 190., and in pursuance of chapter 908 of the Laws of 1896, and the acts amendatory thereof and supplemental thereto, I will faithfully and honestly perform the duties of such appraiser according to the best of my understanding and ability.

Sworn to before me, this day
of, 190..

.....
Notary Public.

NOTICE OF HEARING BEFORE APPRAISER.

(§ 230, Tax Law.)

SURROGATE'S COURT — COUNT OF

IN THE MATTER OF THE APPRAISAL OF THE ESTATE
OF
....., DECEASED,
UNDER THE ACTS IN RELATION TO THE TAXABLE
TRANSFERS OF PROPERTY.

To, residing at

You will please take notice that pursuant to an order of Hon., surrogate of the county of, made and entered the day of, 190., and pursuant to the provisions of chapter 908 of the Laws of 1896, and the acts amendatory thereof and supplemental thereto, I will on the day of, 190., at o'clock in the noon of that day, at, in the, proceed to appraise the property of the above-named decedent at its fair market value at the time of decedent's death, the transfer of which property or some part thereof is, or may be, subject to the tax imposed by said act, or the acts amendatory thereof and supplemental thereto.

And such of you as are under the age of twenty-one years, are required to appear by guardian, if you have one, or, if you have none, to appear and apply for one to be appointed, or, in the event of your neglect or failure to do so, a guardian will be appointed by the surrogate to represent and act for you in this proceeding at any stage thereof, as provided by section 231 of the Transfer Tax Law.

.....,
Appraiser.

Dated,, 190..

(A copy of this notice, together with an affidavit of mailing the same to all the persons interested in said estate, naming them, should be attached to each of the appraiser's reports.)

SUBPÆNA.

THE PEOPLE OF THE STATE OF NEW YORK,

To, GREETING:

WE COMMAND YOU, that all business and excuses being laid aside, you and each of you appear and attend at, in the city (or village) of, on the day of, 190., at o'clock, in the noon of that day, before the undersigned, heretofore duly designated the appraiser by Hon., surrogate of the county of, under the act in relation to the taxable transfers of property, in a proceeding now pending in the said Surrogate's Court, entitled, "In the Matter of the Appraisal of the Estate of, Deceased," to testify what you and each of you may know concerning the estate or property of the said decedent on the part of (the executors or other interested party), and that you produce or bring with you at the time and place aforesaid (to be filled in in accordance with the requirements of each case). And for a failure to attend or a failure to produce the (books, papers, etc., above required) you will be deemed guilty of a contempt of court and liable to pay all loss and damages sustained thereby to the party aggrieved, and in addition thereto, forfeit the sum of fifty dollars.

Witness, appraiser aforesaid at, in the city (or village) of, this day of, 190..

.....,
Appraiser.

**APPLICATION TO SUPERINTENDENT OF INSURANCE
CHAMBERS OF THE SURROGATE'S COURT — COUNTY OF**

ESTATE OF, DECEASED, DATE OF DEATH,

....., 190..

DEAR SIR.—In pursuance of chapter 908, Laws of 1896, and the acts amendatory thereof and supplemental thereto, you are hereby requested to determine and ascertain the value of the following estate, annuities and interests:

Name	Age	Legacy or Estate	Value or Amount
.....			\$.....
.....			
.....			
.....			
.....			

To Superintendent of the Insurance Department.

Respectfully,

.....,
Surrogate.

ORDER RETURNING REPORT TO APPRAISER.

At a Surrogate's Court, held in and for the county of, at the
....., in the city (or village) of, on the day
of, 190..

Present — Hon., Surrogate.

SURROGATE'S COURT — COUNTY OF

IN THE MATTER OF THE APPRAISAL OF THE ESTATE OF, DECEASED, UNDER THE ACTS IN RELATION TO THE TAXABLE TRANSFERS OF PROPERTY.

Upon reading and filing the consents in writing of, Esq., attorney for the executors (or administrators), and, Esq., attorney for the State Comptroller, and upon the affidavit of, dated the day of, 190.., from which it appears

IT IS ORDERED: That the report of the appraiser duly filed herein on the day of, 190.., be returned to him for further consideration, and report, particularly in reference to

.....,
Surrogate.

ORDER DETERMINING THE TAXABLE TRANSFERS AND ASSESSING THE TAX.

At a Surrogate's Court, held in and for the county of, at the, in the city (or village) of, on the day of, 190..

SURROGATE'S COURT — COUNTY OF

IN THE MATTER OF THE APPRAISAL OF THE ESTATE
OF
....., DECEASED,
UNDER THE ACTS IN RELATION TO THE TAXABLE
TRANSFERS OF PROPERTY.

Upon reading the report of, appraiser, filed herein on the day of, 190.., wherein it appears that the said decedent died on the day of, 190.., a resident of, in the State of; and on motion of, Esq., attorney for the herein;, Esq., appearing for the State Comptroller, and (objecting or consenting thereto), it is:

ORDERED AND ADJUDGED: That the cash value of the property referred to in said report, the transfer of which is subject to the tax imposed by the acts in relation to the taxable transfers of property and the tax to which said transfers are liable, is as follows:

Beneficiary	Relationship	Cash Value of Interest	Tax assessed Thereon
.....		\$.....	\$.....
.....		\$.....	\$.....
.....		\$.....	\$.....
.....		\$.....	\$.....
.....		\$.....	\$.....
.....		\$.....	\$.....
....., Surrogate.			

NOTICE OF ASSESSMENT OF TAX.

(§ 231, Tax Law.)

SURROGATE'S COURT — COUNTY OF

IN THE MATTER OF THE APPRAISAL OF THE ESTATE
OF
....., DECEASED,
UNDER THE ACTS IN RELATION TO THE TAXABLE
TRANSFERS OF PROPERTY.

To

You are hereby notified that, I have, by order made and entered the day of, 190.., assessed and fixed the cash value of such interest, estate, legacy, or property, as you are entitled to receive from the estate of the above-named decedent, and the amount of tax to which the same is liable under the laws in reference to the taxable transfers of property, as follows:

Estate, Interest or Property Transferred	Cash Value	Tax assessed Thereon
.....	\$.....	\$.....
.....	\$.....	\$.....
.....	\$.....	\$.....
.....	\$.....	\$.....
.....	\$.....	\$.....
....., Surrogate.		

NOTICE OF APPEAL TO SURROGATE.

(§ 232, Tax Law.)

SURROGATE'S COURT — COUNTY OF

IN THE MATTER OF THE APPRAISAL OF THE ESTATE OF, DECEASED, UNDER THE ACTS IN RELATION TO THE TAXABLE TRANSFERS OF PROPERTY.

GENTLEMEN.— You will please take notice that is dissatisfied with the appraisal herein of the property of the above-named decedent, as made and set forth in the report of, the appraiser herein, and with the order fixing and assessing the transfer tax in respect to the transfers of the property of said decedent, made and entered herein on the day of 190., and hereby appeals to the surrogate from the said appraisal and from said order assessing tax as aforesaid, upon the following grounds:

First:

Second: (*if there are several grounds of appeals, each should be stated*)

Dated, Albany, N. Y.,, 190..

.....
Attorney forTo, Esq.,
Attorney forTo, Esq.,
Clerk of the Surrogate's Court, County of

(*Upon filing this notice in the surrogate's office the appeal to the surrogate has been duly taken.*)

ORDER OF SURROGATE ON APPEAL.

At a Surrogate's Court, held in and for the county of, at the surrogate's office, in the of, on the day of, 190..

Present — Hon., Surrogate.

SURROGATE'S COURT — COUNTY OF

IN THE MATTER OF THE APPRAISAL OF THE ESTATE OF, DECEASED, UNDER THE ACTS IN RELATION TO THE TAXABLE TRANSFERS OF PROPERTY.

An appeal having been taken by, the (*executor, legatee, or other party appellant*) from the order fixing and assessing the transfer tax herein made and entered on the day of, 190., upon the report of the appraiser herein, which report was duly filed in the office of the surrogate of the county of on the day of, 190., on the grounds that, as will more fully appear by reference to the notice of appeal filed herein on the day of, 190..

And said appeal coming on to be heard, and having heard Esq.,

for the, appellant, and, Esq., for the respondent:

Now on motion of, attorney for the

IT IS ORDERED: That said appeal be, and the same hereby is

AND IT IS FURTHER ORDERED:

.....,
Surrogate.

NOTICE OF APPEAL TO THE APPELLATE DIVISION.

SURROGATE'S COURT — COUNTY OF

IN THE MATTER OF THE APPRAISAL OF THE ESTATE
OF

....., DECEASED,
UNDER THE ACTS IN RELATION TO THE TAXABLE
TRANSFERS OF PROPERTY.

GENTLEMEN.— You will please take notice that hereby appeals to the Appellate Division of the Supreme Court of the State of New York for the Department, from the order of the surrogate of the county of heretofore made and entered herein on the day of, 190., affirming (*or reversing or modifying*) the order theretofore made and entered on the day of, 190., fixing and assessing a tax upon the transfers of the property of said decedent under the law relating to taxable transfers of property, and from each and every part thereof (*or from so much thereof, etc., stating the portion of the order appealed from*).

Dated the day of, 190..

Yours, etc.,

.....,
Attorney for

To, Esq.,

Clerk of the Surrogate's Court of the county of,

To, Esq.,

Attorney for the State Comptroller.

PETITION TO REMIT INTEREST.

SURROGATE'S COURT — COUNTY OF

IN THE MATTER OF THE APPRAISAL OF THE ESTATE
OF

....., DECEASED,
UNDER THE ACTS IN RELATION TO THE TAXABLE
TRANSFERS OF PROPERTY.

To the Surrogate's Court of the County of:

The petition of respectfully shows:

That your petitioner is the of the above-named decedent, who died a resident of the county of, State of, on the day of, 190..

That proceedings have been had before appraiser herein for the determination of the tax upon the transfer of the property of said decedent, which tax has been fixed and assessed, by order entered herein on the

day of, 190., at the sum of \$....., as by reference to the report of the appraiser duly filed in the surrogate's office of said county, and the order aforesaid, will more fully appear.

That the transfer tax assessed herein has not been paid, although more than eighteen months have elapsed since the accrual thereof, and by reason of such nonpayment, interest thereon at the rate of ten per centum per annum has been incurred as provided by statute.

That by reason of (here state the facts, showing the statutory reasons entitling the persons liable to pay the tax to have the interest thereon remitted to six per cent.) your petitioner believes that the interest upon said tax should be remitted from ten per cent. to six per cent. as provided by statute.

That your petitioner is desirous of paying the tax as fixed by said order herein, as soon as his claim for the remission of interest, based upon the foregoing reasons, can be passed upon by the court.

Wherefore your petitioner prays that an order be made and entered herein remitting the interest upon the tax assessed to six per cent., to be charged upon said tax from the accrual thereof until the cause of such delay was removed, after which ten per cent. is to be charged as provided by statute, provided such payment be made within ten days from the entry of the order remitting such interest as aforesaid, and that your petitioner may have such other and further relief as to the court may seem just.

Dated,, 190..

.....,
Petitioner.

(Add verification.)

NOTICE OF MOTION ON APPLICATION TO REMIT INTEREST.

SURROGATE'S COURT — COUNTY OF

IN THE MATTER OF THE APPRAISAL OF THE ESTATE
OF
....., DECEASED,
UNDER THE ACTS IN RELATION TO THE TAXABLE
TRANSFERS OF PROPERTY.

Please take notice that on all the papers and proceedings herein, and the verified petition of, hereto annexed and bearing date the day of, 190., application will be made to the surrogate of the county of at a Surrogate's Court to be held at on the day of, 190., at o'clock in thenoon of that day, for an order remitting the interest upon the tax heretofore assessed upon the estate of the above-named decedent, by order of said surrogate made and entered the day of, 190., from ten per cent. to six per cent. per annum, to be computed from the accrual of said tax until the circumstances preventing the earlier payment of said tax were removed, and for such other and further relief as to the court may seem just.

Dated the day of, 190..

.....,
Attorney for Petitioner.

To Hon.,
State Comptroller, Albany, N. Y.

ORDER REMITTING INTEREST FROM TEN TO SIX PER CENT.

At a Surrogate's Court, held in and for the county of, at the surrogate's office, in the of, on the day of, 190..

Present — Hon., Surrogate.

SURROGATE'S COURT — COUNTY OF

IN THE MATTER OF THE APPRAISAL OF THE ESTATE
OF
....., DECEASED,
UNDER THE ACTS IN RELATION TO THE TAXABLE
TRANSFERS OF PROPERTY.

On reading and filing the verified petition of, wherein it appears that payment of the transfer tax upon the estate of the above named decedent, as determined, has been unavoidably delayed, by reason of

And due notice of this application and motion having been given to Esq., attorney for the State Comptroller (or to the State Comptroller personally):

Now, on motion of, Esq., attorney for the petitioner herein, appearing (*in opposition thereto or consenting thereto*), it is

ORDERED: That interest at the rate of ten per cent. upon the tax heretofore assessed herein, be remitted to six per cent. per annum, to be computed from the accrual thereof until the day of, 190.., after which date interest at the rate of ten per cent. is to be charged, until said tax is paid, as provided by the statute.

.....,
Surrogate.

PETITION FOR APPRAISAL AND DETERMINATION BY SURROGATE.

SURROGATE'S COURT — COUNTY OF

IN THE MATTER OF THE APPRAISAL OF THE ESTATE
OF
....., DECEASED,
UNDER THE ACTS IN RELATION TO THE TAXABLE
TRANSFERS OF PROPERTY.

To the Surrogate's Court of the County of

The petition of respectfully shows:

(1) That your petitioner is the of, etc., of the above-named decedent, who died on the day of, 190..., a resident of the County of and State of

(2) That letters were duly issued to petitioner on the day of, 190.., and that your petitioner is still acting as such

(3) That the decedent's estate consists of cash amounting to \$..... (or articles of personal property which have been converted into cash by the executor or administrator, in his administration upon the estate, and other items of personal property, the clear market value of which at the time of decedent's death is fully stated in Schedule A, hereto annexed.)

(4) That Schedule B, hereto annexed, contains an itemized list of the debts of decedent, including funeral and testamentary expenses, commissions, etc.

(5) That Schedule C, hereto annexed, contains the names of all the legatees

ORDER EXEMPTING ESTATE.

(§ 231, Tax Law.)

At a Surrogate's Court, held in and for the county of at the surrogate's office, in the of, on the day of, 190..

Present — Hon., Surrogate.

SURROGATE'S COURT — COUNTY OF

IN THE MATTER OF THE APPRAISAL OF THE ESTATE
OF

....., DECEASED,
UNDER THE ACTS IN RELATION TO THE TAXABLE
TRANSFERS OF PROPERTY.

Upon reading and filing the verified petition of, wherein it appears that the decedent above named died on the day of, 190.., a resident of the county of and State of, and that the transfer of the property of said decedent is not subject to tax under the law relating to taxable transfers of property, and that due notice of this application was given to, Esq., attorney for the State Comptroller (or to the State Comptroller personally).

Now, on motion of, Esq., attorney for the petitioner herein, it is

ORDERED: That the transfer of property of which said decedent died seized and possessed and mentioned in said petition is exempt from tax under the law relating to taxable transfers of property.

.....,
Surrogate.

DISTRICT ATTORNEY PROCEEDINGS — PETITION.

(§ 235, Tax Law.)

SURROGATE'S COURT — COUNTY OF

IN THE MATTER OF THE APPRAISAL OF THE ESTATE
OF

....., DECEASED,
UNDER THE ACTS IN RELATION TO THE TAXABLE
TRANSFERS OF PROPERTY.

To the Surrogate's Court of the County of

The petition of respectfully shows:

First: That your petitioner is the district attorney of the county of, in the State of New York, and your petitioner further alleges upon information and belief:

Second: That on or about the day of, 190.., the above-named decedent died a resident of the county of, State of

Third: That thereafter proceedings were duly instituted in the Surrogate's Court of the county of to have the amount of tax upon the transfers of the property of said decedent fixed and determined, as provided by the law relating to the taxable transfers of the property of decedents, and that an order was entered by the surrogate of the county of in such proceedings on the day of, 190.., fixing and assessing the transfer tax therein at the sum of dollars.

Fourth: Your petitioner further shows that eighteen months have elapsed

since the accrual of said tax, and that the State Comptroller has notified your petitioner in writing if the refusal or neglect of the persons liable therefor to pay the said tax and the interest due thereon, and that no part thereof has been paid (*except, etc., where some legatee has paid the tax on his individual transfer*) and your petitioner believes that the same still remains due and unpaid.

Wherefore your petitioner prays that a citation issue under the seal of this court directed to, the executor (*or administrator*) of said estate, and to, the persons or corporations liable to taxation upon the transfers of the property of said decedent to them respectively, as appears by the taxing order, entered herein, as aforesaid, citing them, and each of them, to appear before this court on a certain day to be designated therein and show cause, if any they have, why the tax and interest under the law relating to the taxable transfers of property should not be paid.

Dated the day of, 190..

.....,
District Attorney of the County of

(Add verification.)

ORDER GRANTING CITATION.

(§ 235, Tax Law.)

At a Surrogate's Court, held in and for the county of, at the surrogate's office, in the of on the day of, 190..

Present — Hon., Surrogate.

SURROGATE'S COURT — COUNTY OF

<p>IN THE MATTER OF THE APPRAISAL OF THE ESTATE OF, DECEASED, UNDER THE ACTS IN RELATION TO THE TAXABLE TRANSFERS OF PROPERTY.</p>
--

On reading and filing the verified petition of, district attorney in and for the county of, bearing date the day of, 190.., it is

ORDERED: That a citation issue herein in accordance with the prayer of said petitioner.

.....,
Surrogate.

CITATION TO SHOW CAUSE.

(§ 2355, Tax Law.)

THE PEOPLE OF THE STATE OF NEW YORK:

By the grace of God, free and independent, to
(*executors or administrators of, etc.*), and to
....., greeting:

You, and each of you are hereby cited and required personally to be and appear before the surrogate of the county of, at the Surrogate's Court in and for said county, held at on the day of, 190.., at o'clock in the noon of that day, then and there to *show cause* why the transfer tax upon the transfer of the property of the above-named decedent, and upon your, and each of your, shares or

interests respectively, pursuant to chapter 908 of the Laws of 1896 and the acts amendatory thereof and supplementary thereto, should not be paid, which tax has been duly fixed and assessed by order of the surrogate of the county of made and entered the day of, 190., together with the interest thereon, which is now due and unpaid.

And such of you hereby cited as are under the age of twenty-one years are required to appear by your guardian, if you have one, or, if you have none, to appear and apply for one to be appointed; or in the event of your neglect or failure to do so, a guardian will be appointed by the surrogate to represent and act for you in this proceeding.

IN TESTIMONY WHEREOF we have caused the seal of the Surrogate's Court of the county of to be hereunto affixed.

Witness, Hon., surrogate of the county of at
(L. S.) the day of 190..

.....
Clerk of the Surrogate's Court.

DECREE DIRECTING PAYMENT.

At a Surrogate's Court, held in and for the county of, at the surrogate's office in the of on the day of, 190..

Present — Hon., Surrogate.

SURROGATE'S COURT—COUNTY OF

<p>IN THE MATTER OF THE APPRAISAL OF THE ESTATE OF, DECEASED, UNDER THE ACTS IN RELATION TO THE TAXABLE TRANSFERS OF PROPERTY.</p>
--

Upon the petition of the district attorney, heretofore filed herein on the day of, 190., and the report of the appraiser, and the order entered thereon on the day of, 1905, fixing and assessing the tax upon the transfers of the property of the above-named decedent, and after hearing, Esq., on behalf of Hon., district attorney, in support of said petition and upon all the papers and proceedings herein, and (*no one appearing in opposition thereto or*) attorney for herein, having appeared in opposition thereto, it is

ORDERED: That the (*executor or administrator*) herein make payment forthwith to the State Comptroller of the sum of dollars, being the amount of tax upon the interests of together with interest upon each of said sums respectively, at the rate of ten per cent. per annum, from the day of, 190., to the date of payment (*or*)

ORDERED: That (*reciting a direction similar to the foregoing that each legatee or distributee shall pay forthwith the tax and interest assessed upon the transfer to him individually*).

AND IT IS FURTHER ORDERED: That said (*executor or administrator*) pay to Hon., district attorney, the sum of dollars, as and for his costs and disbursements herein: (*or*)

AND IT IS FURTHER ORDERED: That Hon., district attorney, is allowed the sum of dollars, as and for his costs and disbursements herein, to be paid forthwith by the above legatees or distributees in proportion to the amount of tax due and owing by each respectively, and in addition to said tax and interest.

.....
Surrogate.

AFFIDAVIT FOR APPRAISAL OF THE PROPERTY OF NON-RESIDENT DECEDENTS.

SURROGATE'S COURT—COUNTY OF

IN THE MATTER OF THE APPRAISAL OF THE ESTATE
OF
....., DECEASED,
UNDER THE ACTS IN RELATION TO THE TAXABLE
TRANSFERS OF PROPERTY.

STATE OF NEW YORK, }
County of, } ss.:

....., being duly sworn says:

First: That he resides at, and that the above-named decedent died on the day of, 190.., a resident of in the State of, and that thereafter letters testamentary (*or letters of administration*) were issued to deponent by the Court of the county of, State of, on the day of, 1905, and deponent thereupon entered upon the discharge of his duties as such (*executor or administrator*), and that he is still acting as such (*executor or administrator*).

Second: That Schedule A, hereto annexed, and made a part hereof, contains an itemized statement of all the property, real and personal, of which the said decedent died seized or possessed, situated within the State of New York, including the shares of stock of all New York corporations, debts owing to decedent by debtors residing in the State of New York, certificates of deposit, choses in action, or other property

Third: That Schedule B, hereto annexed and made a part hereof, contains an itemized statement of all the personal property owned by said decedent, situated without the State of New York.

Fourth: Said decedent, at the time of his death, had no safe-deposit box, individually or held jointly in the name of the decedent and one or more persons within the State of New York, in which was deposited bonds, public or private, mortgages, money, or any evidences of debt whatsoever; that he was not carrying on any business or interested in any copartnership within the State of New York; that he owned no shares of stock of national banks situated therein, and did not own any jewelry, horses, carriages, furniture, or other items of personal property of any nature or kind whatsoever in said State, except as fully set forth in said Schedule A, hereto annexed. (*If the decedent exercised a power of appointment over any property within this State, the facts should be fully stated here.*)

Fifth: That prior to his death the said decedent made no transfer of property within the State of New York by deed, grant, bargain, sale, or gift made in contemplation of death or intended to take effect in possession or enjoyment at or after death. (*State whether any person or persons became entitled to any remainder or reversion in property within this State by reason of the decedent's death.*)

Sixth: That the fair market value of the decedent's entire personal estate, wheresoever situated, at the time of his death, was dollars.

Seventh: That Schedule C, hereto annexed, and made a part hereof, contains an itemized statement of the funeral expenses and expenses of administration incurred and to be incurred by the representatives of said estate. Also an itemized statement showing the valid debts due and owing by decedent at the time of his death, and the commissions to which I am entitled as (*executor or administrator*) by the laws of the state of

Eighth: That all the persons interested in said estate are of full age and

sound mind, except

Ninth: (*When decedent left a will.*) That Schedule D, annexed hereto, and made a part hereof, contains a full and true copy of the decedent's last will and testament.

(*When decedent died intestate.*) That all the persons who are entitled to share in the estate of said decedent, together with their relationship, places of residence, and the share or interest of each are as follows:

Name of Distributee	Relationship	Place of Residence	Share or Interest
.....			\$.....
.....			
.....			
.....			

....., Executor or Administrator.

Sworn to before me, this day
of, 190..

....., Notary Public.

(*County clerk's certificate should be attached.*)

PETITION FOR APPRAISAL — NON-RESIDENT DECEDENT.

SURROGATE'S COURT—COUNTY OF

IN THE MATTER OF THE APPRAISAL OF THE ESTATE
OF
....., DECEASED,
UNDER THE ACTS IN RELATION TO THE TAXABLE
TRANSFERS OF PROPERTY.

To the Surrogate's Court of the County of:

The petition of respectfully shows:

First: That he is (*the executor, administrator, or other interested person, including the State Comptroller*), and as such is interested in the estate of the above-named decedent.

Second: That, as petitioner is informed and believes, the above-named decedent died on or about the day of 190., a resident of, in the county of, and State of, and at the time of his death he was seized and possessed of property in the county of, in the State of New York, all or some part of which is subject to taxation under the laws relating to the taxable transfers of property, to the value of and upwards of (*ten thousand dollars, or where it passes to collaterals, in whole or in part, five hundred dollars*).

Third: That your petitioner is informed and believes that said decedent (*died intestate, or*) left a last will and testament which was thereafter and on or about the day of, 190., duly admitted to probate by the Court of the county of, State of, by the terms of which said decedent appointed of the executor of his said will and the said is still acting as such executor.

Fourth: That, as deponent is informed and believes, no application has been made for ancillary letters upon the estate of said decedent in the county of or any other county in this State, and that no proceeding has been brought by the representatives of said decedent to fix and determine the tax upon the transfers of the property of said decedent within this State at the time of his death, although application has been, or is about to be, made by

such representatives to remove such property from the State of New York without first having the transfer tax thereon determined and paid.

Fifth: That (*where decedent left a will*) attached hereto is a copy of the decedent's will: (*where the decedent died intestate*) attached hereto is an affidavit of the foregoing administrator of said decedent showing

Sixth: That all the persons who are interested in said estate, and who are entitled to notice of all proceedings herein and their addresses, are as follows:

.....	Comptroller	Albany, N. Y.
.....		
.....		
.....		
.....		

Seventh: (*Where application is made on behalf of the State Comptroller.*) That attached hereto, and made a part hereof, is the affidavit of the executor (*or administrator*), showing in detail the facts hereinbefore stated.

Wherefore your petitioner prays for the entry of an order herein directing the appraisal of the property of the above-named decedent, as provided by law.

Dated (Albany, N. Y.), 190..

.....
Petitioner.

(Add verification.)

ORDER DESIGNATING APPRAISER — NONRESIDENT DECEDENT. (§ 230, Tax Law.)

(The order designating appraiser in case of resident decedents can be used in designating an appraiser of the property of non-resident decedents, with slight change where reference is made to the petition upon which the order is granted. See form on page 411.)

AFFIDAVIT.

Required by the State Comptroller upon Application for the Removal or Transfer of the Property of a Nonresident Decedent, where Transfer Tax Proceedings have not been Instituted.

APPLICATION TO THE COMPTROLLER OF THE STATE OF NEW YORK FOR CONSENT TO TRANSFER CERTAIN PROP- erty BELONGING TO LATE A RESIDENT OF.....
--

Application is made to the Comptroller of the State of New York for consent to transfer the following property belonging to the above-named non-resident decedent, pursuant to section 227 of the Transfer Tax Law of the State of New York, namely:

	Present value.
100 shares Erie common stock, par value, \$100, at.....	\$.....
Deposit in the Albany Savings Bank .....	.....
Total	\$.....

(All the property within this State should be set forth, including stocks of New York corporations, etc., as required by the following affidavit, to be attached to such application:)

STATE OF NEW YORK, }
 County of, } ss.:

....., being duly sworn, says: (*the affidavit should show the following facts*):

Name of decedent — date of death, and decedent's late residence.

Name and address of the executor or administrator, and whether ancillary letters have been applied for in this State or not.

Shares of stock of various New York corporations owned by the decedent.

Bonds, foreign and domestic, physically present within this State at the time of decedent's death.

Bank stock, and cash on deposit in any savings bank or other institution in this State. Also, certificates of deposit issued by any bank, trust company, or other institution in this State.

Policies of insurance upon the life of such non-resident issued by corporations of this State and payable to the decedent or his legal representatives.

Notes or other evidences of indebtedness owing such non-resident by residents of this State.

Whether the decedent was interested in any partnership, or carried on any business within this State, and if so, the nature and location thereof. Also whether the decedent was entitled to any legacy or share of an estate, the nature, amount, and particulars in reference thereto.

If the non-resident decedent exercised a power of appointment over any property within this State, that fact shall be fully set forth, also whether any remainder or reversionary interest passed under any prior will, or any transfer to any one in possession or enjoyment, as the result of the decedent's death.

Real property in this State owned by decedent, giving a brief description of each parcel, and the estimated value thereof, after deducting any incumbrances thereon.

Any property, real or personal, or any interest therein, other than the above within the State of New York, and the values thereof.

Whether the decedent made any transfer of property within this State in contemplation of death or intended to take effect in possession or enjoyment at or after his death.

The names, residence, and relationship of all persons receiving any portion of the decedent's property and the amount, or other interest therein, whether such persons are residents of this State or not; also the character of any corporation of the State of New York, or any other State, to and for the use of which any part of the stock of New York corporations — the proceeds from the sale thereof or any other property within this State, will be transferred by reason of the will of said decedent.

Sworn to before me, this

day of, 190..

.....
 Notary Public (*or other officer before whom
 affidavit is made*).

AGREEMENT — UPON COMPOSITION OF TRANSFER TAX.

SURROGATE'S COURT—COUNTY OF

IN THE MATTER OF THE APPRAISAL OF THE ESTATE
 OF
, DECEASED,
 UNDER THE ACTS IN RELATION TO THE TAXABLE
 TRANSFERS OF PROPERTY.

WHEREAS, The above-named died on the day
 of, 190.., a resident of the county of and State

of, leaving a last will and testament which was duly admitted to probate in the Surrogate's Court of the county of, and letters testamentary were thereupon issued to, of, New York.

AND WHEREAS, Transfer tax proceedings were thereafter regularly instituted in the Surrogate's Court of the county of, and by order of Hon., surrogate of said county of, made and entered the day of, 190.,, Esq., was directed to appraise the property of said decedent pursuant to the provision of the law relating to the taxable transfers of property, and the report of such appraiser was filed in the office of the surrogate aforesaid, and an order entered thereupon on the day of, 190., fixing and assessing a transfer tax upon certain transfers of said decedent's property at the sum of \$.....

AND WHEREAS, Decedent by the clause of his will provided as follows:

AND WHEREAS, It appears from the report of said appraiser that in view of the foregoing provision (or provisions) of said decedent's will it was impossible to presently determine the value of the estate or property transferred to at the time of the decedent's death, and that the appraisal thereof was therefore postponed until the value of said transfers could be definitely determined (or such other facts by reason of which the present taxability of the transfer has been heretofore held for future appraisal, it appearing that the remainders or expectant estates were of such a nature, or so disposed and circumstanced, that the taxes thereon were held not present payable, or where the interests of the legatees or devisees were not ascertainable as provided in section 233 of the Tax Law.)

AND WHEREAS, The said (executor or trustees) above named are now desirous of personally settling the remaining claims of the people of the State of New York upon or in respect to the transfers of the property or estates, and the tax thereon which may now be due and payable, or which may hereafter become payable, under the laws of the State of New York, and by compounding all such taxes upon terms which are equitable and expedient, and that said executor or trustees be granted a discharge upon the payment of the taxes provided for in this composition agreement in pursuance of the law in such case made and provided.

NOW, THEREFORE, In consideration of the following:

IT IS HEREBY STIPULATED AND AGREED: That the transfer tax in respect to be, and the same hereby is ascertained, fixed, compounded, and adjusted at the sum of dollars (\$.....), which sum it is agreed shall be accepted by the Hon., as Comptroller of the State of New York, by and with the approval of the Hon., Attorney-General of the State of New York, in full payment, satisfaction, and discharge of all transfer taxes which are payable, or which, but for this agreement, might at any time hereafter become due and payable to the State of New York, under or by virtue of the laws thereof, upon or in respect to the transfers of the property or estate of the above-named decedent which are mentioned and referred to as compromised, and which have become fully settled and adjusted by the execution of this composition agreement, as provided by section 233 of the Transfer Tax Law.

IN WITNESS WHEREOF, the said (executor or trustees), under the will of the said deceased, and Hon. Comptroller of the State of New York, have signed and acknowledged the execution of these presents in triplicate, this day of 190..

..... [L. S.]
..... [L. S.]
..... [L. S.]

Approved, this day of, 190..

.....
Attorney-General.

(Add acknowledgments by the representatives of the estate, and State Comptroller.)

CERTIFICATE.

Of Comptroller Showing Payment of Tax upon Real Estate Belonging to
Decedent.

STATE OF NEW YORK,
COMPTROLLER'S OFFICE.

<p>IN THE MATTER OF THE APPRAISAL OF THE ESTATE OF, DECEASED, UNDER THE ACTS IN RELATION TO THE TAXABLE TRANSFERS OF PROPERTY.</p>	}
--	---

ALBANY, N. Y.,, 190..

I,, Comptroller of the State of New York, do hereby certify that it appears from the records of this office that upon the report of, appraiser in and for the county of, in the State of New York, a duplicate copy of which report was filed in this office on the day of, 190.., an order was made by Hon., surrogate of county, on the day of, 190.., assessing a transfer tax upon the transfers of the property of said, who died a resident of on the day of, 190..; that the amount of said tax assessed, as aforesaid, was the sum of \$....., a part of which sum is the tax assessed upon the transfer of certain real estate, of which the above-named decedent died seized and which is described and appraised in the report of said appraiser as follows, namely:

And I further certify that the amount of said tax (*less the discount for payment within six months from the accrual thereof; or, together with interest thereon at the rate of per cent. per annum from the accrual thereof, where not paid within eighteen months*) has been fully paid by (*the executor or administrator*) of said estate, and that the final duplicate receipts showing such payments were issued under date of, 190.., and that by reason thereof the lien of the State of New York upon the real estate hereinbefore described, for tax (*and interest*) due upon the transfer thereof, has been fully satisfied and discharged.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
[L. S.] my official seal, this day of, 190..

.....,
Comptroller.

(If the tax upon real estate was paid by the devisee or heir-at-law the foregoing certificate will be modified accordingly. It would seem that the heir or devisee is not entitled to this certificate until the tax has been assessed, although payment on account thereof may have been made.)

APPLICATION TO JUSTICE OF SUPREME COURT FOR REAPPRAISAL.
SUPREME COURT — COUNTY OF

IN THE MATTER OF THE APPLICATION
 OF
 HON.
 STATE COMPTROLLER, FOR A REAPPRAISAL OF
 THE PROPERTY
 OF
, DECEASED,
 UNDER THE ACTS IN RELATION TO THE TAXABLE
 TRANSFERS OF PROPERTY.

To the Hon., one of the Justices of the Supreme Court of the
 Judicial District:

The petition of Hon. respectfully shows:

(1) That your petitioner is the Comptroller of the State of New York, and that the above-named decedent was a resident of in the county of, and State of New York at the time of his death, which said place is within the judicial district of the Supreme Court of this State.

(2) That the said decedent died on the day of, 190.., and letters (*testamentary or of administration*) were issued by the surrogate of the county of to, who were and are the duly qualified and acting (*executors and administrators*) of the estate of said decedent.

(3) That proceedings have heretofore been instituted to determine the clear market value of the decedent's estate at the time of the transfer thereof and the liability of the transfers of said decedent's property to taxation under chapter 908 of the Laws of 1896 and the acts amendatory thereof and supplemental thereto, and upon the report of, Esq., the appraiser in such proceedings, an order was entered by the surrogate of the county of on the day of, 190.. (*determining the value of decedent's estate to be the sum of \$..... and exempting said estate or fixing and assessing the tax upon the transfers of said decedent's property, as follows*):

(4) That your petitioner is informed and believes that such appraisal (*assessment or determination*) was (*fraudulently, collusively, or erroneously made*) owing to the following errors of fact, namely,

(5) That two years have not elapsed since the entry of the order or decree of the surrogate determining the value of said estate and assessing the tax thereon (*or exempting said estate from taxation*).

(6) That all the persons (*or corporations*) who are interested in said estate and who are entitled to notice of all proceedings herein, together with their post-office addresses or places of business, are as follows:

Name.	Interested as.	P. O. Address.
.....		
.....		
.....		

And that all of said persons are of full age and sound mind except

Wherefore your petitioner prays for the appointment of some competent person to reappraise the estate of the above-named decedent, in accordance with the provisions of section 232 of the Tax Law.

Dated, Albany, N. Y.,, 190..

(Add verification.)

.....
 Petitioner.

**AFFIDAVIT TO BE FILED UPON APPLICATION FOR LETTERS
TESTAMENTARY OR LETTERS OF ADMINISTRATION.**

SURROGATE'S COURT — COUNTY OF

IN THE MATTER OF THE APPLICATION FOR LETTERS
(*Testamentary or of Administration*) UPON
THE ESTATE

OF

....., DECEASED,

STATE OF NEW YORK, }
COUNTY OF, } ss.:

....., being duly sworn, says: That he is the petitioner herein; that the above-named decedent died at the of, in the county of, and State of New York, on the day of, 190..

That the estimated value of the real property in this State of which said decedent died seized (*less any mortgage incumbrance thereon*) is dollars (\$.....).

That the estimated value of the personal property of which said decedent died is possessed is dollars (\$.....).

That the following is a complete list of the names, residence, and relationship to decedent of all persons entitled to any legacy or share of the decedent's estate (*and the names and place of business of all corporations who are entitled to any legacy or devise under the will of said decedent*), together with the character and value of such legacy, devise (*or share*) as far as the same can at present be determined:

Name.	P. O. Address.	Relationship.	Value.
.....			\$.....
.....			\$.....
.....			\$.....
.....			\$.....
.....			\$.....

Petitioner, and executor named in decedent's will (*or petitioner, and person entitled to administer upon decedent's estate.*)

Sworn to before me, this day
of, 190..

.....,
Notary Public.

**NOTICE BY BANK OR TRUST COMPANY OF THE TRANSFER OF
DEPOSITS.**

....., 190..

Hon., State Comptroller, Albany, N. Y.:

DEAR SIR.—The (*bank or trust company*) pursuant to section 227 of chapter 368 of the Laws of 1905, hereby gives notice that on the day of, 190.., or earlier, upon receipt of your written consent, it will deliver or transfer the funds now on deposit to the credit of, who was a resident of the county of, State of, to, who is the duly qualified and acting executor (*or administrator*) of the estate of said decedent.

The post-office address of the said executor (*or administrator*) is

Yours, etc.,

.....,
Secretary or Treasurer, Etc.

NOTICE OF THE INTENDED TRANSFER OF STOCK OF NEW YORK CORPORATIONS.

....., 190..

Hon., State Comptroller, Albany, N. Y.:

DEAR SIR.—In compliance with section 227 of chapter 368 of the Laws of 1905, you are hereby notified that on, 190.., or earlier, upon receipt of your written consent, I will transfer shares of the capital stock of, registered in the name of, now deceased, and whose late residence was at, in the State of

The executor (or administrator) of the above-named decedent is, whose post-office address is, State of

If there be no objection to the proposed transfer, kindly forward the usual consent.

Yours, etc.,

.....
Secretary or other officer.

NOTICE OF INTENDED DELIVERY OF CONTENTS OF SAFE-DEPOSIT BOX TO EXECUTORS, ETC.

....., 190..

Hon., State Comptroller, Albany, N. Y.:

DEAR SIR.—This will notify you that late a resident of the county of, in the State of, was (*the individual or joint*) lessee of a safety-deposit box in the vaults of (*bank or other institution*), and that application has been made by the (*executors or administrators or the surviving lessee*) for the delivery of the contents of said box, belonging to the above-named decedent, to such (*executor, administrator, or other person aforesaid*), and that pursuant to section 227 of chapter 368 of the Laws of 1905 the (*bank or other institution*) aforesaid hereby notifies you that it will on the day of, 190.., at o'clock in the noon of that day deliver the contents of said safety-deposit box to the said (*executor, administrator, etc.*).

(*In case of resident decedents.*) Your consent for such delivery, without retaining a sufficient portion or amount thereof to pay any tax and interest which may be thereafter assessed upon the transfer of such property, is requested.

Yours, etc.,

.....

NOTICE BY BANK OR TRUST COMPANY OF THE TRANSFER OF DEPOSITS IN THE JOINT NAMES OF A DECEDENT AND ONE OR MORE PERSONS, OR IN TRUST FOR ANOTHER.

....., 190..

Hon. State Comptroller, Albany, N. Y.:

DEAR SIR.—The (*bank or trust company*), of, hereby gives notice that there is standing upon the books of this (*bank or trust company*) a deposit amount to \$..... in the name (*or in the*

joint names) of ("John Doe or Richard Roe"—"John Doe (and) (or Richard Roe, either or the survivor can draw"—"John Doe, in trust for Richard Roe"—or otherwise) and the officers of said (bank or trust company) are informed and believe that one of the persons above named, has recently died, a resident of in the county of and State of, and that on the day of, 190., at o'clock, A. M., the said (bank or trust company) will, at the request of (the executor, administrator, cestui que trust, survivor, or other interested person) transfer or deliver the funds representing said deposit to the said (name the person making application therefor). Your consent to this transfer is desired pursuant to section 227 of chapter 368 of the Laws of 1905.

Yours, etc.,

.....

DECEDENT ESTATE LAW.

CONSOLIDATOR'S NOTES TO TEXT OF DECEDENT ESTATE LAW.

1.—Upon examining the revised statutes it was found that there were certain provisions relating to wills that had never been consolidated in any "General Law." They could not be assigned appropriately to any of the present general laws. They were substantive in character and there was an obvious objection to inserting them in the code which was already overburdened with provisions of a substantive nature. Some new "Consolidated Law" was therefore necessary. A "Wills Law" had been suggested, but this term, while adequate for the matter coming from the revised statutes was not broad enough to cover substantive provisions of a related character that should be removed from the code. The term "Decedent Estate Law" was selected therefore both as suggestive of the contents of the new law and general enough in its terms to include matter relating to wills as well as executors and administrators and kindred topics of a substantive character here assembled.

Throughout this chapter references in sections have been changed where necessary to preserve the original application of the sections as they existed in the Revised Statutes, the Code of Civil Procedure or in other statutes. The reason for every such change is seen at a glance and hence a separate note is not made in each instance.

2. **Sec. 2.**—Substantially the same definition of the word "will" is given in the Code of Civil Procedure, Sec. 2514, subd. 4, but, that is only for the purpose of construing the provisions of the code.

3. **Art. 2.**—Most of the provisions of this article come from the Revised Statutes with such provisions from the code as were found applicable. So far as possible the language of the Revised Statutes has been followed in incorporating its provisions in the Decedent Estate Law, so that the force of decisions of the courts upon any provision abstracted from the Revised Statutes might not be impaired. In some cases more apt language might be suggested, but for the reasons stated, no improvement in expression has been attempted. These remarks are also applicable to sections taken from the Code of Civil Procedure and inserted in this chapter.

4. **Secs. 18-20.**—These sections relate to the limitation on the power of persons to make devises or bequests to corporations created under certain acts heretofore passed. While under these acts no new corporations can be formed in the future the limitations should be noted as affecting gifts to corporations already existing. So far as these acts place a limitation upon the amount of property which can be taken by devise or bequest, they have been inserted in the Membership Corporations Law, as the portions so assigned relate solely to the powers of the corporations as distinguished from the power of the person making the will.

5. **Art. 3.**—This article embraces Art. 9 of the Real Property Law,

known as the "Statute of Descents" and sections 2732-2734 of the Code of Civil Procedure, known as the "Statute of Distribution."

6. Secs. 96, 97 and 99.—These sections relating to advancements of real and personal estates are in *pari materia* and must be read together. See 79 N. Y. 246. The provisions of all three sections were taken from the Revised Statutes and inserted in the Real Property Law and the Code of Civil Procedure in former revisions of the statutes. Section 99 is by its terms inapplicable in a case where there is any real property of the intestate to descend to his heirs.

7. Art. 4.—There are many matters of a more or less substantive character relating to executors and administrators, trustees and appraisers in the Code of Civil Procedure which might have been inserted under this article. It has been deemed best, however, to leave these matters in the Code of Civil Procedure until such time as the Code shall be revised. When that time arrives these provisions can be readily assigned to this article.

8. Sec. 111.—This provision is found in section 9 of the Personal Property Law and for greater convenience in reference has been transferred to the Decedent Estate Law. The reference to guardians has been transferred to Domestic Relations Law. The portion of the section relating to trustees generally has been allowed to remain in the Personal Property Law.

TABLE.

Showing the Provisions of the Revised Statutes, Session Laws, Real Property Law and Code of Civil Procedure which are Consolidated in the Decedent Estate Law.

Sections, etc., of Revised Statutes, etc.		Sections of Consol. Law.
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" 21.....		15
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" 41.....		22
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Sections, etc., of Revised
Statutes, etc.Sections of
Consol. Law.

R. S. pt. 2, ch. 6, Tit. 5:

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L. 1873, " 397, " 5 pt.	20
L. 1875, " 267, " 7 pt.	18
L. 1875, " 343, " 5 pt.	18
L. 1883, " 65, " 1	110
L. 1886, " 236, " 7 pt.	18
L. 1887, " 315, " 5 pt.	20
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Real Property Law Sec. 280	80
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Sections, etc., of Revised Statutes, etc.	Sections of Consol. Law.
Code Civ. Pro. Sec. 1843	101
“ 1859	102
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“ 2611 pt.	23
“ 2611 pt.	24
“ 2611 pt.	25
“ 2628	46
“ 2633	42
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“ 2660, pt.	103
“ 2694	47
“ 2703	44
“ 2704	45
“ 2732	98
“ 2733, pt.	99
“ 2734	100

DECEDENT ESTATE LAW.

(L. 1909, CHAP. 18, BEING CHAP. 13 OF THE CONSOLIDATED LAWS.
IN EFFECT FEB. 17, 1909.)

- ARTICLE** 1. Short title and definitions (§§ 1, 2).
2. Wills (§§ 10-47).
3. Descent and distribution (§§ 80-103).
4. Executors, administrators and testamentary trustees (§§ 110-120).
5. Laws repealed; when to take effect (§§ 130, 131).

ARTICLE 1.

SHORT TITLE AND DEFINITIONS.

- SECTION** 1. Short title.
2. Definitions.

§ 1. **Short title.**

This chapter shall be known as the "Decedent Estate Law."

§ 2. **Definitions.**

The term "will," as used in this chapter, shall include all codicils as well as wills.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 71.

ARTICLE 2.

WILLS.

- SECTION** 10. Who may devise.
11. What real property may be devised.
12. Who may take real property by devise.
13. Devises of real property to aliens.
14. Wills of real estate, how construed.
15. Who may make wills of personal estate.
16. Unwritten wills of personal property, when allowed.
17. Devise or bequest to certain societies, associations and corporations.
18. Devise or bequest to certain corporations. [Repealed.]
19. Devise or bequest to certain benevolent, charitable and scientific corporations. [Repealed.]
20. Devise or bequest to certain bar associations and five corporations. [Repealed.]
21. Manner of execution of will.

* So in original.

- SECTION** 22. Witnesses to will to write names and places of residence.
23. What wills may be proved.
24. Effect of change of residence since execution of will.
25. Application of certain provisions to wills previously made.
26. Child born after making of will.
27. Devise or bequest to subscribing witness.
28. Action by child born after making of will, or by subscribing witness.
29. Devise or bequest to child or descendant or to a brother or sister of the testator not to lapse.
30. Reception of wills for safe keeping.
31. Sealing and indorsing wills received for safe keeping.
32. Delivery of wills received for safe keeping.
33. Opening wills received by surrogate for safe keeping.
34. Revocation and cancellation of written wills.
35. Revocation by marriage and birth of issue.
36. Will of unmarried woman.
37. Bond or agreement to convey property devised or bequeathed not a revocation.
38. Charge or incumbrance not a revocation.
39. Conveyance, when not to be deemed a revocation.
40. Conveyance, when to be deemed a revocation.
41. Canceling or revocation of second will not to revive first.
42. Record of wills in county clerk's office.
43. County Clerk's index of recorded wills.
44. Recording will proved in another state or foreign country.
45. Authentication of papers from another state or foreign country for use in this state.
46. Validity of purchase notwithstanding devise.
47. Validity and effect of testamentary dispositions.
48. Application of certain sections in this article.

§ 10. Who may devise.

All persons, except idiots, persons of unsound mind and infants, may devise their real estate, by a last will and testament, duly executed, according to the provisions of this article.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 1, § 1, as amended by L. 1867, ch. 782, § 3.

§ 11. What real property may be devised.

Every estate and interest in real property descendible to heirs, may be so devised.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 1, § 2.

§ 12. Who may take real property by devise.

Such a devise of real property may be made to every person capable by law of holding real estate; but no devise to a corporation shall be valid, unless such corporation be expressly authorized by its charter, or by statute, to take by devise.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 1, § 3.

§ 13. Devises of real property to aliens.

[Repealed by L. 1913, ch. 153, in effect Apr. 1, 1913.]

§ 14. Wills of real estate, how construed.

Every will that shall be made by a testator, in express terms, of all his real estate, or in any other terms denoting his intent to devise all his real property, shall be construed to pass all the real estate, which he was entitled to devise, at the time of his death.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 2, § 5.

§ 15. Who may make wills of personal estate.

Every male person of the age of eighteen years or upwards, and every female of the age of sixteen years or upwards, of sound mind and memory, and no others, may give and bequeath his or her personal estate, by will in writing.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 2, § 21, as amended by L. 1867, ch. 782, § 4.

§ 16. Unwritten wills of personal property, when allowed.

No nuncupative or unwritten will, bequeathing personal estate, shall be valid, unless made by a soldier while in actual military service, or by a mariner, while at sea.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 2, § 22.

§ 17. Devise or bequest to certain societies, associations and corporations.

No person having a husband, wife, child or parent, shall, by his or her last will and testament, devise or bequeath to any benevolent, charitable, literary, scientific, religious or missionary society, association or corporation, in trust or otherwise, more than one-half part of his or her estate, after the payment of his or her debts, and such devise or bequest shall be valid to the extent of one-half, and no more.

Derivation: L. 1860, ch. 360, § 1.

§ 18. Devise or bequest to certain corporations.

[Repealed by L. 1911, ch. 857, in effect July 29, 1911.]

§ 19. Devise or bequest to certain benevolent, charitable and scientific corporations.

[Repealed by L. 1911, ch. 857, in effect July 29, 1911.]

§ 20. Devise or bequest to certain bar associations, veterinary associations and fire corporations.

[Repealed by L. 1911, ch. 857, in effect July 29, 1911.]

§ 21. Manner of execution of will.

Every last will and testament of real or personal property, or both, shall be executed and attested in the following manner:

1. It shall be subscribed by the testator at the end of the will.

2. Such subscription shall be made by the testator in the presence of each of the attesting witnesses, or shall be acknowledged by him, to have been so made, to each of the attesting witnesses.

3. The testator, at the time of making such subscription, or at the time of acknowledging the same, shall declare the instrument so subscribed, to be his last will and testament.

4. There shall be at least two attesting witnesses, each of whom shall sign his name as a witness, at the end of the will, at the request of the testator.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 40.

§ 22. Witnesses to will to write names and places of residence.

The witnesses to any will, shall write opposite to their names their respective places of residence; and every person who shall sign the testator's name to any will by his direction, shall write his own name as a witness to the will. Whoever shall neglect to comply with either of these provisions, shall forfeit fifty dollars, to be recovered by any person interested in the property devised or bequeathed, who will sue for the same. Such omission shall not affect the validity of any will; nor shall any person liable to the penalty aforesaid, be excused or incapacitated on that account, from testifying respecting the execution of such will.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 41.

§ 23. What wills may be proved.

A will of real or personal property, executed as prescribed by the laws of the state, or a will of personal property executed without the state, and within the United States, the Dominion of Canada, or the Kingdom of Great Britain and Ireland, as prescribed by the laws of the state or country where it is or was executed, or a will of personal property executed by a person not a resident of the state, according to the laws of the testator's residence, may be admitted to probate in this state.

Derivation: Code Civil Procedure, § 2611. For remainder of section, see this chapter, §§ 24, 25.

§ 24. Effect of change of residence since execution of will.

The right to have a will admitted to probate, the validity of the execution thereof, or the validity or construction of any provision contained therein, is not affected by a change of the testator's residence made since the execution of the will.

Derivation: Code Civil Procedure, § 2611. For remainder of section, see this chapter, §§ 23, 25.

§ 25. Application of certain provisions to wills previously made.

The last two sections apply only to a will executed by a person dying after April eleventh, eighteen hundred and seventy-six, and they do not invalidate a will executed before that date, which would have been valid but for the enactment of sections one and two of chapter one hundred and eighteen of the laws of eighteen hundred and seventy-six, except where such a will is revoked or altered, by a will which those sections rendered valid, or capable of being proved as prescribed in article first of title third of chapter eighteen of the code of civil procedure.

Derivation: Code Civil Procedure, § 2611. For remainder of section, see this chapter, §§ 23, 24.

§ 26. Child born after making of will.

Whenever a testator shall have a child born after the making of a last will, either in the lifetime or after the death of such testator, and shall die leaving such child, so after-born, unprovided for by any settlement, and neither provided for, nor in any way mentioned in such will, every such child shall succeed to the same portion of such parent's real and personal estate, as would have descended or been distributed to such child, if such parent had died intestate, and shall be entitled to recover the same portion from the devisees and legatees, in proportion to and out of the parts devised and bequeathed to them by such will.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 49, as amended by L. 1869, ch. 22, § 1.

§ 27. Devise or bequest to subscribing witness.

If any person shall be a subscribing witness to the execution of any will, wherein any beneficial devise, legacy, interest or appointment of any real or personal estate shall be made to such witness, and such will cannot be proved without the testimony of such witness, the said devise, legacy, interest or appointment shall be void, so far only as concerns such witness, or any claiming under him; and such person shall be a competent witness, and compellable to testify respecting the execution of the said will, in like manner as if no such devise or bequest had been made.

But if such witness would have been entitled to any share of the testator's estate, in case the will was not established, then so much of the share that would have descended, or have been distributed to such witness, shall be saved to him, as will not exceed the value of the devise or bequest made to him in the will, and he shall recover the same of the devisees or legatees named in the will, in

proportion to, and out of, the parts devised and bequeathed to them.

Derivation: R. S., Prt 2, ch. 6, Tit. 1, Art. 3, §§ 50, 51.

§ 28. Action by child born after making of will, or by subscribing witness.

A child, born after the making of a will, who is entitled to succeed to a part of the real or personal property of the testator, or a subscribing witness to a will, who is entitled to succeed to a share of such property, may maintain an action against the legatees or devisees, as the case requires, to recover his share of the property; and he is subject to the same liabilities, and has the same rights, and is entitled to the same remedies, to compel a distribution or partition of the property, or a contribution from other persons interested in the estate, or to gain possession of the property, as any other person who is so entitled to succeed.

Derivation: Code Civil Procedure, § 1868.

§ 29. Devise or bequest to child or descendant, or to a brother or sister of the testator not to lapse.

Whenever any estate, real or personal, shall be devised or bequeathed to a child or other descendant of the testator, or to a brother or sister of the testator, and such legatee or devisee shall die during the lifetime of the testator, leaving a child or other descendant who shall survive such testator, such devise or legacy shall not lapse, but the property so devised or bequeathed shall vest in the surviving child or other descendant of the legatee or devisee, as if such legatee or devisee had survived the testator and had died intestate. (Amended by L. 1912, ch. 384, in effect May 5, 1912.)

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 52.

§ 30. Reception of wills for safe keeping.

The clerk of every county in this state, the register of deeds in the city and county of New York, and the surrogate of every county, upon being paid the fees allowed therefor by law, shall receive and deposit in their offices respectively, any last will or testament which any person shall deliver to them for that purpose, and shall give a written receipt therefor to the person depositing the same.

Derivation: R. S., Part 3, ch. 7, Tit. 3, Art. 7, § 67.

§ 31. Sealing and indorsing wills received for safe keeping.

Such will shall be inclosed in a sealed wrapper, so that the contents thereof cannot be read, and shall have indorsed thereon the name of the testator, his place of residence, and the day, month and year when delivered; and shall not, on any pretext whatever, be

opened, read or examined, until delivered to a person entitled to the same, as hereinafter directed.

Derivation: R. S., Part 3, ch. 7, Tit. 3, Art. 7, § 68.

§ 32. Delivery of wills received for safe keeping.

Such will shall be delivered only,

1. To the testator in person; or,
2. Upon his written order, duly proved by the oath of a subscribing witness; or,
3. After his death to the persons named in the indorsement on the wrapper of such will, if any such indorsement be made thereon; or,
4. If there be no such indorsement, and if the same shall have been deposited with any other officer than a surrogate, then to the surrogate of the county.

Derivation: R. S., Part 3, ch. 7, Tit. 3, Art. 7, § 69.

§ 33. Opening wills received by surrogate for safe keeping.

If such will shall have been deposited with a surrogate, or shall have been delivered to him as above prescribed, such surrogate, after the death of the testator, shall publicly open and examine the same, and make known the contents thereof, and shall file the same in his office, there to remain until it shall have been duly proved, if capable of proof, and then to be delivered to the person entitled to the custody thereof; or until required by the authority of some competent court to produce the same in such court.

Derivation: R. S., Part 3, ch. 7, Tit. 3, Art. 7, § 70.

§ 34. Revocation and cancellation of written wills.

No will in writing, except in the cases hereinafter mentioned, nor any part thereof, shall be revoked, or altered, otherwise than by some other will in writing, or some other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which the will itself was required by law to be executed; or unless such will be burnt, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by another person in his presence, by his direction and consent; and when so done by another person, the direction and consent of the testator, and the fact of such injury or destruction, shall be proved by at least two witnesses.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 42.

§ 35. Revocation by marriage and birth of issue.

If after the making of any will, disposing of the whole estate of

the testator, such testator shall marry, and have issue of such marriage, born either in his lifetime or after his death, and the wife or the issue of such marriage shall be living at the death of the testator, such will shall be deemed revoked, unless provision shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, or in such way mentioned therein, as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation, shall be received.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 43.

§ 36. Will of unmarried woman.

A will executed by an unmarried woman, shall be deemed revoked by her subsequent marriage.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 44.

§ 37. Bond or agreement to convey property devised or bequeathed not a revocation.

A bond, agreement, or covenant, made for a valuable consideration, by a testator, to convey any property devised or bequeathed in any will previously made, shall not be deemed a revocation of such previous devise or bequest, either at law or in equity; but such property shall pass by the devise or bequest, subject to the same remedies on such bond, agreement or covenant, for a specific performance or otherwise, against the devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 45.

§ 38. Charge or incumbrance not a revocation.

A charge or incumbrance upon any real or personal estate, for the purpose of securing the payment of money, or the performance of any covenant, shall not be deemed a revocation of any will relating to the same estate, previously executed; but the devises and legacies therein contained, shall pass and take effect, subject to such charge or incumbrance.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 46.

§ 39. Conveyance, when not to be deemed a revocation.

A conveyance, settlement, deed, or other act of a testator, by which his estate or interest in property, previously devised or bequeathed by him, shall be altered, but not wholly divested, shall not be deemed a revocation of the devise or bequest of such property; but such devise or bequest shall pass to the devisee or legatee,

the actual estate or interest of the testator, which would otherwise descend to his heirs, or pass to his next of kin; unless in the instrument by which such alteration is made, the intention is declared, that it shall operate as a revocation of such previous devise or bequest.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 47.

§ 40. Conveyance, when to be deemed a revocation.

But if the provisions of the instrument by which such alteration is made, are wholly inconsistent with the terms and nature of such previous devise or bequest, such instrument shall operate as a revocation thereof, unless such provisions depend on a condition or contingency, and such condition be not performed, or such contingency do not happen.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 48.

§ 41. Canceling or revocation of second will not to revive first.

If, after the making of any will, the testator shall duly make and execute a second will, the destruction, canceling or revocation of such second will, shall not revive the first will, unless it appear by the terms of such revocation, that it was his intention to revive and give effect to his first will; or unless after such destruction, canceling or revocation, he shall duly republish his first will.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 53.

§ 42. Record of wills in county clerk's office.

A will of real property, which has been, at any time, either before or after this chapter takes effect duly proved in the supreme court, or the court of chancery, or before a surrogate of the state with the certificate of proof thereof annexed thereto, or indorsed thereon, or an exemplified copy thereof, may be recorded in the office of the clerk or the register, as the case requires, of any county in the state, in the same manner as a deed of real property. Where the will relates to real property, the executor or administrator, with the will annexed, must cause the same, or an exemplified copy thereof, to be so recorded, in each county where real property of the testator is situated, within twenty days after letters are issued to him. An exemplification of the record of such a will, from any surrogate's or other office where the same has been so recorded, either before or after this chapter takes effect, may be in like manner recorded in the office of the clerk or register of any county. Such a record or exemplification, or an exemplification of the record

thereof, must be received in evidence, as if the original will was produced and proved.

Derivation: Code Civil Procedure, § 2633.

§ 43. County clerk's index of recorded wills.

Upon recording a will or exemplification, as prescribed in the last section, the clerk or register must index it in the same books, and substantially in the same manner, as if it was a deed recorded in his office.

Derivation: Code Civil Procedure, § 2634. For remainder of section, see Code Civil Procedure, § 2634.

§ 44. Recording will proved in another state or foreign country.

Where real property situated within this state, or an interest therein, is devised or made subject to a power of disposition by a will duly executed in conformity with the laws of this state, of a person who was at the time of his, or her death, a resident elsewhere within the United States, or in a foreign country, and such will has been admitted to probate within the state or territory, or foreign country, where the decedent so resided, and is filed or recorded in the proper office as prescribed by the laws of that state or territory or foreign country, a copy of such will or of the record thereof and of the proofs or of the records thereof, or if the proofs are not on file or recorded in such office, of any statement, on file or recorded in such office, of the substance of the proofs, authenticated as prescribed in section forty-five of this chapter, or if no proofs and no statement of the substance of the proofs be on file or recorded in such office, a copy of such will or of the record thereof, authenticated as prescribed in said section forty-five, accompanied by a certificate that no proofs or statement of the substance of proof of such will, are or is on file or recorded in such office, made and likewise authenticated as prescribed in said section forty-five, may be recorded in the office of the surrogate of any county in this state where such real property is situated; and such record in the office of such surrogate or an exemplified copy thereof shall be presumptive evidence of such will and of the execution thereof, in any action or special proceeding relating to such real property.

Derivation: Code Civil Procedure, § 2703. Amended by L. 1909, ch. 240, § 13, in effect April 22, 1909.

§ 45. Authentication of papers from another state or foreign country for use in this state.

To entitle a copy of a will admitted to probate or of letters

testamentary or of letters of administration, granted in any other state or in any territory of the United States, and of the proofs or of any statement of the substance of the proofs of any such will, or of the record of any such will, letters, proofs or statement, to be recorded or used in this state as provided in article seventh of title third of chapter eighteenth of the code of civil procedure or in section forty-four of this chapter, such copy must be authenticated by the seal of the court or officer by which or whom such will was admitted to probate or such letters were granted, or having the custody of the same or of the record thereof, and the signature of a judge of such court or the signature of such officer and of the clerk of such court or officer if any; and must be further authenticated by a certificate under the great or principal seal of such state or territory, and the signature of the officer who has the custody of such seal, to the effect that the court or officer by which or whom such will was admitted to probate or such letters were granted, was duly authorized by the laws of such state or territory to admit wills to probate or to grant letters testamentary or of administration and to keep the same and records thereof; that the seal of such court or officer affixed to such copy is genuine, and that the officer making such certificate under such seal of such state or territory verily believes that each of the signatures attesting such copy is genuine; and to entitle any certificate concerning proofs accompanying the copy of the will or of the record so authenticated, to be recorded or used in this state, as provided in said article or section, such certificate must be under the seal of the court or officer by which or whom such will was admitted to probate, or having the custody of such will or record, and the signature of a judge or the clerk of such court, or the signature of such officer, authenticated by a certificate under such great or principal seal of such state or territory, and the signature of the officer having the custody thereof, to the effect that the seal of the court or officer affixed to such certificate concerning proofs is genuine, and that such officer making such certificate under such seal of such state or territory, verily believes that the signature to such certificate concerning proofs is genuine. To entitle a copy of a will admitted to probate or of letters testamentary, or of letters of administration, granted in a foreign country, and of the proofs or of any statement of the substance of the proofs of any such will, or of the record of any such will, letters, proofs or statement, to be recorded or used in this state,

as provided in said article or section, such copy must be authenticated in the manner prescribed by the laws of such foreign country, and must be further authenticated by a certificate of a judge of a court of record or by the chief officer of the department of justice of such foreign country to the effect that such authentication is in conformity with the laws of such foreign country, and that the court or officer by which or by whom such will was so admitted to probate, or such letters were granted, was duly authorized by the laws of such foreign country to admit wills to probate, or to grant letters testamentary or of administration, and to keep the same and records thereof; and the signature and official character of such judge or court of record or of such chief officer of the department of justice shall be attested by a consular officer of the United States, resident in such foreign country, under the seal of his office; and to entitle any certificate concerning proofs accompanying the copy of the will or of the records so authenticated, to be used and recorded in this state, as provided in said article or section, such certificate concerning the proofs must be similarly authenticated and attested.

Derivation: Code Civil Procedure, § 2704. Amended by L. 1909, ch. 340, in effect September 1, 1909.

§ 46. Validity of purchase notwithstanding devise.

The title of a purchaser in good faith and for a valuable consideration, from the heir of a person who died seized of real property, shall not be affected by a devise of the property made by the latter, unless within four years after the testator's death, the will devising the same is either admitted to probate and recorded as a will of real property in the office of the surrogate having jurisdiction, or established by the final judgment of a court of competent jurisdiction of the state, in an action brought for that purpose. But if, at the time of the testator's death, the devisee is either within the age of twenty-one years, or insane, or imprisoned on a criminal charge, or in execution upon conviction of a criminal offense, for a term less than for life; or without the state; or, if the will was concealed by one or more of the heirs of the testator, the limitation created by this section does not begin until after the expiration of one year from the removal of such a disability, or the delivery of the will to the devisee or his representative, or to the proper surrogate.

Derivation: Code Civil Procedure, § 2628.

§ 47. Validity and effect of testamentary dispositions.

The validity and effect of a testamentary disposition of real property, situated within the state, or of an interest in real property so situated, which would descend to the heir of an intestate, and the manner in which such property or such an interest descends, where it is not disposed of by will, are regulated by the laws of the state, without regard to the residence of the decedent. Except where special provision is otherwise made by law, the validity and effect of a testamentary disposition of any other property situated within the state, and the ownership and disposition of such property, where it is not disposed of by will, are regulated by the laws of the state or country, of which the decedent was a resident, at the time of his death. Whenever a decedent, being a citizen of the United States, wherever resident, shall have declared in his will and testament that he elects that such testamentary dispositions shall be construed and regulated by the laws of this State, the validity and effect of such dispositions shall be determined by such laws. (Amended by L. 1911, ch. 244, in effect June 6, 1911.)

Derivation: Code Civil Procedure, § 2694.

§ 48. Application of certain sections in this article.

Section twenty-five hundred and fourteen of the code of civil procedure is applicable to the provisions of sections twenty-three to twenty-five, both inclusive, and sections forty-two to forty-seven, both inclusive, of this chapter.

Added by L. 1909, ch. 240, § 16. In effect April 22, 1909.

ARTICLE 3.

DESCENT AND DISTRIBUTION.

- SECTION** 80. Definitions and use of terms; effect of article.
81. General rule of descent.
82. Lineal descendants of equal degree.
83. Lineal descendants of unequal degree.
84. When father inherits.
85. When mother inherits.
86. When collateral relatives inherit; collateral relatives of equal degree.
87. Brothers and sisters and their descendants.
88. Brothers and sisters of father and mother and their descendants and grandparents.
89. Illegitimate children.
90. Relatives of the half-blood.
91. Relatives of husband or wife.
92. Cases not hereinbefore provided for.
93. Posthumous children and relatives.
94. Inheritance, sole or in common.
95. Alienism of ancestor.
96. Advancements of real and personal estates.
97. How advancement adjusted.
98. Distribution of personal property of decedent.
99. Advancements of personal estates.
100. Estates of married women.
101. Liability of heirs and devisees for debt of decedent.
102. Liability of heir or devisee not affected where will makes specific provision for payment of debt.
103. Action against husband for debts of deceased wife.
104. Application of certain sections in this article.

§ 80. Definitions and use of terms; effect of article.

1. The term "real property" as used in this article, includes every estate, interest and right, legal and equitable, in lands, tenements and hereditaments, except such as are determined or extinguished by the death of an intestate, seized or possessed thereof, or in any manner entitled thereto; leases for years, estates for the life of another person; and real property held in trust, not devised by the beneficiary. "Inheritance" means real property as herein defined, descended according to the provisions of this article.

2. The expressions "Where the inheritance shall have come to the intestate on the part of the father" or "mother," as the case may be, include every case where the inheritance shall have come to the intestate by devise, gift or descent from the parent referred to, or from any relative of the blood of such parent.

3. When in this article a person is described as "living," it means living at the time of the death of the intestate from whom the descent came; when he is described as having "died," it means that he died before such intestate.

4. This article does not affect a limitation of an estate by deed or will, or tenancy by the courtesy or dower.

Derivation: Real Property Law, L. 1896, ch. 547, § 280.

§ 81. General rule of descent.

The real property of a person who dies without devising the same shall descend:

1. To his lineal descendants.
2. To his father.
3. To his mother; and
4. To his collateral relatives, as prescribed in the following sections of this article.

Derivation: Real Property Law, L. 1896, ch. 547, § 281.

§ 82. Lineal descendants of equal degree.

If the intestate leave descendants in the direct line of lineal descent, all of equal degree of consanguinity to him, the inheritance shall descend to them in equal parts however remote from him the common degree of consanguinity may be.

Derivation: Real Property Law, L. 1896, ch. 547, § 282.

§ 83. Lineal descendants of unequal degree.

If any of the descendants of such intestate be living, and any be dead, the inheritance shall descend to the living, and the descendants of the dead, so that each living descendant shall inherit such share as would have descended to him had all the descendants in the same degree of consanguinity who shall have died leaving issue been living; and so that issue of the descendants who shall have died shall respectively take the shares which their ancestors would have received.

Derivation: Real Property Law, L. 1896, ch. 547, § 283.

§ 84. When father inherits.

If the intestate die without lawful descendants, and leave a father, the inheritance shall go to such father, unless the inheritance

came to the intestate on the part of his mother, and she be living; if she be dead, the inheritance descending on her part shall go to the father for life, and the reversion to the brothers and sisters of the intestate and their descendants, according to the law of inheritance by collateral relatives hereinafter provided; if there be no such brothers or sisters or their descendants living, such inheritance shall descend to the father in fee.

Derivation: Real Property Law, L. 1896, ch. 547, § 284.

§ 85. When mother inherits.

If the intestate die without descendants and leave no father, or leave a father not entitled to take the inheritance under the last section, and leave a mother, and a brother or sister, or the descendant of a brother or sister, the inheritance shall descend to the mother for life, and the reversion to such brothers and sisters of the intestate as may be living, and the descendants of such as may be dead, according to the same law of inheritance hereinafter provided. If the intestate in such case leave no brother or sister or descendant thereof, the inheritance shall descend to the mother in fee.

Derivation: Real Property Law, L. 1896, ch. 547, § 285.

§ 86. When collateral relatives inherit; collateral relatives of equal degree.

If there be no father or mother capable of inheriting the estate, it shall descend in the cases hereinafter specified to the collateral relatives of the intestate; and if there be several such relatives, all of equal degree of consanguinity to the intestate, the inheritance shall descend to them in equal parts, however remote from him the common degree of consanguinity may be.

Derivation: Real Property Law, L. 1896, ch. 547, § 286.

§ 87. Brothers and sisters and their descendants.

If all the brothers and sisters of the intestate be living, the inheritance shall descend to them; if any of them be living and any be dead, to the brothers and sisters living, and the descendants, in whatever degree, of those dead; so that each living brother or sister shall inherit such share as would have descended to him or her if all the brothers and sisters of the intestate who shall have died, leaving issue, had been living, and so that such descendants in whatever degree shall collectively inherit the share which their parent would have received if living; and the same rule shall prevail as to

all direct lineal descendants of every brother and sister of the intestate whenever such descendants are of unequal degrees.

Derivation: Real Property Law, L. 1896, ch. 547, § 287.

§ 88. Brothers and sisters of father and mother and their descendants and grandparents.

If there be no heir entitled to take, under either of the preceding sections, the inheritance, if it shall have come to the intestate on the part of the father, shall descend:

1. To the brothers and sisters of the father of the intestate in equal shares, if all be living.

2. If any be living, and any shall have died, leaving issue, to such brothers and sisters as shall be living and to the descendants of such as shall have died.

3. If all such brothers and sisters shall have died, to their descendants.

4. If there be no such brothers or sisters of such father, nor any descendants of such brothers or sisters, to the brothers and sisters of the mother of the intestate, and to the descendants of such as shall have died, or if all have died, to their descendants. But, if the inheritance shall have come to the intestate on the part of his mother, it shall descend to her brothers and sisters and their descendants; and if there be none, to the brothers and sisters of the father and their descendants, in the manner aforesaid. If the inheritance has not come to the intestate on the part of either father or mother, it shall descend to the brothers and sisters both of the father and mother of the intestate, and their descendants in the same manner. In all cases mentioned in this section the inheritance shall descend to the brothers and sisters of the intestate's father or mother, as the case may be, or to their descendants in like manner as if they had been the brothers and sisters of the intestate.

5. If there be no such brothers or sisters of such father or mother, nor any descendants of such brothers or sisters, the inheritance, if it shall have come to the intestate on the part of his father, shall descend to his father's parents, then living, in equal parts, and if they be dead, then to his mother's parents, then living, in equal parts; but if the inheritance shall have come to the intestate on the part of his mother, it shall descend to his mother's parents, then living, in equal parts, and if they be dead, to his father's parents, then living, in equal parts. If the inheritance

has not come to the intestate on the part of either father or mother, it shall descend to his living grandparents in equal parts.

Derivation: Real Property Law, L. 1896, ch. 547, § 288, as amended by L. 1904, ch. 106, § 1.

§ 89. Illegitimate children.

If an intestate who shall have been illegitimate die without lawful issue, or illegitimate issue entitled to take, under this section, the inheritance shall descend to his mother; if she be dead, to his relatives on her part, as if he had been legitimate. If a woman die without lawful issue, leaving an illegitimate child, the inheritance shall descend to him as if he were legitimate. In any other case illegitimate children or relatives shall not inherit.

Derivation: Real Property Law, L. 1896, ch. 547, § 289.

§ 90. Relatives of the half-blood.

Relatives of the half-blood and their descendants, shall inherit equally with those of the whole blood and their descendants, in the same degree, unless the inheritance came to the intestate by descent, devise or gift from an ancestor; in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance.

Derivation: Real Property Law, L. 1896, ch. 547, § 290.

§ 91. Relatives of husband or wife.

When the inheritance shall have come to the intestate from a deceased husband or wife, as the case may be, and there be no person entitled to inherit under any of the preceding sections, then such real property of such intestate shall descend to the heirs of such deceased husband or wife, as the case may be, and the persons entitled, under the provisions of this section, to inherit such real property, shall be deemed to be the heirs of such intestate.

Derivation: Real Property Law, L. 1896, ch. 547, § 290a, as added by L. 1901, ch. 481, § 1.

§ 92. Cases not hereinbefore provided for.

In all cases not provided for by the preceding sections of this article, the inheritance shall descend according to the course of the common law.

Derivation: Real Property Law, L. 1896, ch. 547, § 291.

§ 93. Posthumous children and relatives.

A descendant or a relative of the intestate begotten before his death, but born thereafter, shall inherit in the same manner as if

he had been born in the lifetime of the intestate and had survived him.

Derivation: Real Property Law, L. 1896, ch. 547, § 292.

§ 94. Inheritance, sole or in common.

When there is but one person entitled to inherit, he shall take and hold the inheritance solely; when an inheritance or a share of an inheritance descends to several persons they shall take as tenants in common, in proportion to their respective rights.

Derivation: Real Property Law, L. 1896, ch. 547, § 293.

§ 95. Alienism of ancestor.

A person capable of inheriting under the provisions of this article, shall not be precluded from such inheritance by reason of the alienism of an ancestor.

Derivation: Real Property Law, L. 1896, ch. 547, § 294.

§ 96. Advancements of real and personal estates.

If a child of an intestate shall have been advanced by him, by settlement or portion, real or personal property, the value thereof must be reckoned for the purposes of descent and distribution as part of the real and personal property of the intestate descendible to his heirs and to be distributed to his next of kin; and if such advancement be equal to or greater than the amount of the share which such child would be entitled to receive of the estate of the deceased, such child and his descendants shall not share in the estate of the intestate; but if it be less than such share, such child and his descendants shall receive so much, only, of the personal property, and inherit so much only, of the real property, of the intestate, as shall be sufficient to make all the shares of all the children in the whole property, including the advancement, equal. The value of any real or personal property so advanced, shall be deemed to be that, if any, which was acknowledged by the child by an instrument in writing; otherwise it must be estimated according to the worth of the property when given. Maintaining or educating a child, or giving him money without a view to a portion or settlement in life is not an advancement. An estate or interest given by a parent to a descendant by virtue of a beneficial power, or of a power in trust with a right of selection, is an advancement.

Derivation: Real Property Law, L. 1896, ch. 547, § 295.

§ 97. How advancement adjusted.

When an advancement to be adjusted consisted of real property, the adjustment must be made out of the real property descendible

to the heirs. When it consisted of personal property, the adjustment must be made out of the surplus of the personal property to be distributed to the next of kin. If either species of property is insufficient to enable the adjustment to be fully made, the deficiency must be adjusted out of the other.

Derivation: Real Property Law, L. 1896, ch. 547, § 296.

§ 98. Distribution of personal property of decedent.

If the deceased died intestate, the surplus of his personal property after payment of debts; and if he left a will, such surplus, after the payment of debts and legacies, if not bequeathed, must be distributed to his widow, children, or next of kin, in manner following:

1. One-third part to the widow, and the residue in equal portions among the children, and such persons as legally represent the children if any of them have died before the deceased.

2. If there be no children, nor any legal representatives of them, then one-half of the whole surplus shall be allotted to the widow, and the other half distributed to the next of kin of the deceased, entitled under the provisions of this section.

3. If the deceased leaves a widow, and no descendant, parent, brother or sister, nephew or niece, the widow shall be entitled to the whole surplus; but if there be a brother or sister, nephew or niece, and no descendant or parent, the widow shall be entitled to one-half of the surplus as above provided, and to the whole of the residue if it does not exceed two thousand dollars; if the residue exceeds that sum, she shall receive in addition to the one-half, two thousand dollars; and the remainder shall be distributed to the brothers and sisters and their representatives.

4. If there be no widow, the whole surplus shall be distributed equally to and among the children, and such as legally represent them.

5. If there be no widow, and no children, and no representatives of a child, the whole surplus shall be distributed to the next of kin, in equal degree to the deceased, and their legal representatives; and if all the brothers and sisters of the intestate be living, the whole surplus shall be distributed to them; if any of them be living and any be dead, to the brothers and sisters living, and the descendants in whatever degree of those dead; so that to each living brother or sister shall be distributed such share as would have been distributed to him or her if all the brothers and sisters of the intes-

tate who shall have died leaving issue had been living, and so that there shall be distributed to such descendants in whatever degree, collectively, the share which their parent would have received if living; and the same rule shall prevail as to all direct lineal descendants of every brother and sister of the intestate whenever such descendants are of unequal degrees.

6. If the deceased leave no children and no representatives of them, and no father, and leave a widow and a mother, the half not distributed to the widow shall be distributed in equal shares to his mother and brothers and sisters, or the representatives of such brothers and sisters; and if there be no widow, the whole surplus shall be distributed in like manner to the mother, and to the brothers and sisters, or the representatives of such brothers and sisters.

7. If the deceased leave a father and no child or descendant, the father shall take one-half if there be a widow, and the whole, if there be no widow.

8. If the deceased leave a mother, and no child, descendant, father, brother, sister, or representative of a brother or sister, the mother, if there be a widow, shall take one-half; and the whole, if there be no widow.

9. If the deceased was illegitimate and leave a mother, and no child, or descendant, or widow, such mother shall take the whole and shall be entitled to letters of administration in exclusion of all other persons. If the mother of such deceased be dead, the relatives of the deceased on the part of the mother shall take in the same manner as if the deceased had been legitimate, and be entitled to letters of administration in the same order.

10. Where the descendants, or next of kin of the deceased, entitled to share in his estate, are all in equal degree to the deceased, their shares shall be equal.

11. When such descendants or next of kin are of unequal degrees of kindred, the surplus shall be apportioned among those entitled thereto, according to their respective stocks; so that those who take in their own rights shall receive equal shares, and those who take by representation shall receive the share to which the parent whom they represent, if living, would have been entitled.

12. No representation shall be admitted among collaterals after brothers and sisters descendants. This subdivision shall not ap-

ply to the estate of a decedent who shall have died prior to May eighteenth, nineteen hundred and five.

13. Relatives of the half-blood shall take equally with those of the whole blood in the same degree; and the representatives of such relatives shall take in the same manner as the representatives of the whole blood.

14. Descendants and next of kin of the deceased, begotten before his death, but born thereafter, shall take in the same manner as if they had been born in the lifetime of the deceased, and had survived him.

15. If a woman die, leaving illegitimate children, and no lawful issue, such children inherit her personal property as if legitimate.

15-a. If there be no husband or wife surviving and no children, and no representatives of a child, and no next of kin, then the whole surplus shall be allotted to a surviving child of the husband or wife of the deceased, or if there be more than one, it shall be distributed equally among them. (This subdivision added by L. 1913, ch. 489, in effect May 14, 1913.)

16. If there be no husband or wife surviving and no children, and no representatives of a child, and no next of kin, and no child or children of the husband or wife of the deceased, then the whole surplus shall be distributed equally to and among the next of kin of the husband or wife of the deceased, as the case may be, and such next of kin shall be deemed next of kin of the deceased for all the purposes specified in this article or in chapter eighteen of the code of civil procedure; but such surplus shall not, and shall not be construed to, embrace any personal property except such as was received by the deceased from such husband or wife, as the case may be, by will or by virtue of the laws relating to the distribution of the personal property of the deceased person. (Amended by L. 1913, ch. 489, in effect May 14, 1913.)

Derivation: Code Civil Procedure, § 2732. Second sentence in subd. 12, is L. 1905, ch. 539, § 2, as amended by L. 1909, ch. 240, § 14, in effect April 22, 1909.

§ 99. Advancements of personal estates.

If any child of such deceased person have been advanced by the deceased, by settlement or portion of real or personal property, the value thereof shall be reckoned with that part of the surplus of the personal property, which remains to be distributed among the children; and if such advancement be equal or superior to the amount, which, according to the preceding section, would be distributed to such child, as his share of such surplus and advancement, such child and his descendants shall be excluded from any share in the distribution of the surplus. If such advancement be not equal to such amount, such child, or his descendants, shall be entitled to receive so much only, as is sufficient to make all the shares of all the children, in such surplus and advancement, to be equal, as near as can be estimated. The maintaining or educating, or the giving

of money to a child, without a view to a portion or settlement in life, shall not be deemed an advancement, within the meaning of this section, nor shall the foregoing provisions of this section apply in any case where there is any real property of the intestate to descend to his heirs.

Derivation: Code Civil Procedure, § 2733. For remainder of section, see Code Civil Procedure, § 2733.

§ 100. Estates of married women.

The provisions of this article respecting the distribution of property of deceased persons apply to the personal property of married women dying, leaving descendants them surviving. The husband of any such deceased married woman shall be entitled to the same distributive share in the personal property of his wife to which a widow is entitled in the personal property of her husband by the provisions of this article and no more.

Derivation: Code Civil Procedure, § 2734.

§ 101. Liability of heirs and devisees for debt of decedent.

The heirs of an intestate, and the heirs and devisees of a testator, are respectively liable for the debts of the decedent, arising by simple contract, or by specialty, to the extent of the estate, interest, and right in the real property, which descended to them from, or was effectually devised to them by, the decedent.

Derivation: Code Civil Procedure, § 1843.

§ 102. Liability of heir or devisee not affected where will makes specific provision for payment of debt.

The preceding section and article two of title three of chapter fifteen of the code of civil procedure do not affect the liability of an heir or devisee, for a debt of a testator, where the will expressly charges the debt exclusively upon the real property descended or devised, or makes it payable exclusively by the heir or devisee, or out of the real property descended or devised, before resorting to the personal property, or to any other real property descended or devised.

Derivation: Code Civil Procedure, § 1859.

§ 103. Action against husband for debts of deceased wife.

If a surviving husband does not take out letters of administration on the estate of his deceased wife, he is presumed to have assets in his hands sufficient to satisfy her debts, and is liable therefor. A husband is liable as administrator for the debts of his wife only to the extent of the assets received by him. If he dies leaving any assets of his wife unadministered, except as otherwise provided

by law, they pass to his executors or administrators as part of his personal property, but are liable for her debts in preference to the creditors of the husband.

Derivation: Code Civil Procedure, § 2660. For remainder of section, see Code Civil Procedure, § 2660. Amended by L. 1909, ch. 240, § 15, in effect April 22, 1909.

§ 104. Application of certain sections in this article.

Section twenty-five hundred and fourteen of the code of civil procedure is applicable to the provisions of sections ninety-eight to one hundred, both inclusive, and section one hundred and three, of this chapter.

Added by L. 1909, ch. 240, § 16. In effect April 22, 1909.

ARTICLE 4.

EXECUTORS, ADMINISTRATORS AND TESTAMENTARY TRUSTEES.

SECTION 110. Sales of real estate by executors under authority of will.

111. *Investment of trust funds by executor or administrator.

112. Executors de son tort abolished.

113. Special promise to answer for debt of testator or intestate.

114. Liability of executors and administrators of executors and administrators.

115. Rights of administrators de bonis non.

116. Actions upon contract by and against executors.

117. Administrators to have same rights and liabilities as executors.

118. Actions of trespass by executors and administrators.

119. Actions of trespass against executors and administrators.

120. Actions for wrongs, by or against executors and administrators.

121. Action or proceeding by executor of executor.

122. Appraisal of estate of deceased person.

§ 110. Sales of real estate by executors under authority of will.

Sales of real estate situate within the state of New York, made by executors in pursuance of an authority given by any last will, unless otherwise directed in such will, may be public or private and on such terms as in the opinion of the executor shall be most advantageous to those interested therein.

Derivation: L. 1883, ch. 65, § 1.

§ 111. Investment of trust funds.

An executor, administrator, trustee or other person holding trust funds for investment may invest the same in the same kind of securities as those in which savings banks of this state are by law authorized to invest the money deposited therein, and the income derived therefrom, and in bonds and mortgages on unincumbered real property in this state worth fifty per centum more than the amount loaned thereon. Any executor, administrator, trustee or other person holding trust funds may require such personal bonds or guaranties of payment to accompany investments as may seem prudent, and all premiums paid on such guaranties may be charged

* So in original.

to or paid out of income, providing that such charge or payment be not more than at the rate of one-half of one per centum per annum on the par value of such investments. But no trustee shall purchase securities hereunder from himself.

Derivation: L. 1897, ch. 417, § 9 pt., as amended by L. 1902, ch. 295, § 1, and L. 1907, ch. 669, § 1.

§ 112. Executors de son tort abolished.

No person shall be liable to an action as executor of his own wrong, for having received, taken or interfered with, the property or effects of a deceased person; but shall be responsible as a wrong-doer in the proper action to the executors, or general or special administrators, of such deceased person, for the value of any property or effects so taken or received, and for all damages caused by his acts, to the estate of the deceased.

Derivation: R. S., Part 3, ch. 8, Tit. 3, Art. 1, § 17.

§ 113. Special promise to answer for debt of testator or intestate.

No executor or administrator shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate, out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, be in writing, and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

Derivation: R. S., Part 2, ch. 6, Tit. 5, § 1.

§ 114. Liability of executors and administrators of executors and administrators.

The executors and administrators of every person, who, as executor, either of right or in his own wrong, or as administrator, shall have wasted or converted to his own use, any goods, chattels, or estate, of any deceased person, shall be chargeable in the same manner as their testator or intestate would have been, if living.

Derivation: R. S., Part 2, ch. 6, Tit. 5, § 6.

§ 115. Rights of administrators de bonis non.

When administration of the effects of a deceased person, which shall have been left unadministered by any previous executor or administrator of the same estate, shall be granted to any person, such person may appeal from any judgment obtained against such previous executor or administrator of the same estate, or against the original testator or intestate; and shall defend any appeal from any such judgment; and shall have the same remedies, in the prosecution or defense of any action, by or against such previous executors

or administrators, and for the collection and enforcing of any judgment obtained by them, as they would have by law.

Derivation: R. S., Part 3, ch. 8, Tit. 3, Art. 1, § 18.

§ 116. Actions upon contract by and against executors.

Actions of account, and all other actions upon contract, may be maintained by and against executors, in all cases in which the same might have been maintained, by or against their respective testators.

Derivation: R. S., Part 2, ch. 6, Tit. 5, § 2.

§ 117. Administrators to have same rights and liabilities as executors.

Administrators shall have actions to demand and recover the debts due to their intestate, and the personal property and effects of their intestate; and shall answer and be accountable to others to whom the intestate was holden or bound, in the same manner as executors.

Derivation: R. S., Part 2, ch. 6, Tit. 5, § 3.

§ 118. Actions of trespass by executors and administrators.

Executors and administrators shall have actions of trespass against any person who shall have wasted, destroyed, taken or carried away, or converted to his own use, the goods of their testator or intestate in his lifetime. They may also maintain actions for trespass committed on the real estate of the deceased, in his lifetime.

Derivation: R. S., Part 2, ch. 6, Tit. 5, § 4.

§ 119. Actions of trespass against executors and administrators.

Any person, or his personal representatives, shall have actions of trespass against the executor or administrator of any testator or intestate, who in his lifetime shall have wasted, destroyed, taken or carried away, or converted to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of any such person.

Derivation: R. S., Part 2, ch. 6, Tit. 5, § 5.

§ 120. Actions for wrongs, by or against executors and administrators.

For wrongs done to the property, rights or interests of another, for which an action might be maintained against the wrong-doer, such action may be brought by the person injured, or after his death, by his executors or administrators, against such wrong-doer, and after his death against his executors or administrators, in the same manner and with the like effect, in all respects, as actions founded upon contracts. This section shall not extend to an action

for personal injuries, as such action is defined in section thirty-three hundred and forty-three of the code of civil procedure; except that nothing herein contained shall affect the right of action now existing to recover damages for injuries resulting in death.

Added by L. 1909, ch. 240, § 16. In effect April 22, 1909.

§ 121. Action or proceeding by executor of executor.

An executor of an executor shall have no authority to commence or maintain any action or proceeding relating to the estate, effects or rights of the testator of the first executor, or to take any charge or control thereof, as such executor.

Added by L. 1909, ch. 240, § 16. In effect April 22, 1909.

§ 122. Appraisal of estate of deceased person.

Whenever by reason of the provisions of any law of this state it shall become necessary to appraise in whole or in part the estate of any deceased person, the persons whose duty it shall be to make such appraisal shall value the real estate at its full and true value, taking into consideration actual sales of neighboring real estate similarly situated during the year immediately preceding the date of such appraisal, if any; and they shall value all such property, stocks, bonds, or securities as are customarily bought or sold in open markets in the city of New York or elsewhere, for the day on which such appraisal or report may be required, by ascertaining the range of the market and the average of prices as thus found, running through a reasonable period of time.

Derivation: L. 1891, ch. 34, part of § 1. For remainder of section, see General Corporation Law and Debtor and Creditor Law. Renumbered by L. 1909, ch. 240, § 17.

ARTICLE 5.

LAWS REPEALED ; WHEN TO TAKE EFFECT.

SECTION 130. Laws repealed.

131. When to take effect.

§ 130. Laws repealed.

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 131. When to take effect.

This chapter shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

Revised Statutes.... Part 2, chapter 6, title 1, §§ 1-5, 21, 22,
40-53, 69-71

Revised Statutes.... Part 2, chapter 6, title 4, §§ 55, 58

Revised Statutes.... Part 2, chapter 6, title 5, §§ 1-6, 23

Revised Statutes.... Part 3, chapter 7, title 3, §§ 67-70

* Revised Statutes.... Part 3, chapter 8, title 3, §§ 1, 2, 11,
17, 18

Laws of	Chapter	Section
1787.....	47.....	All
1799.....	75.....	All
1801.....	9.....	All
R. L. 1813...	23.....	All
R. L. 1813...	75.....	All
1815.....	157.....	All
1821.....	207.....	All
1828.....	21.....	1, ¶¶ 83, 95, 196, 336, 544 (2d meet.)
1828.....	313.....	All
1829.....	148.....	All
1835.....	264.....	All
1837.....	234.....	All
1840.....	348.....	1

* Amended by L. 1909, ch. 240, § 93.

Laws of	Chapter	Section
1848.....	319.....	Proviso in § 6.
1860.....	360.....	All
1865.....	368.....	Proviso in § 6.
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1869.....	22.....	All
1873.....	397.....	Proviso in § 5.
1875.....	267.....	Proviso in § 7.
1875.....	343.....	Proviso in § 5.
1876.....	118.....	All
1883.....	65.....	All
1886.....	236.....	Proviso in § 7.
1887.....	315.....	Proviso in § 5.
1887.....	317.....	Proviso in § 7.
1890.....	286.....	Proviso in § 6.
1891.....	34.....	1, pt. relating to estates of deceased persons.
1893.....	100.....	All
1896.....	547.....	280-296
1897.....	417.....	9, pt. relating to executors, administrators and other trustees of estates of deceased persons.
1902.....	295.....	1, pt. amending L. 1897, Ch. 417, § 9, as to executors, administrators and other trustees of estates of deceased persons.
1903.....	623.....	Pt. amending the proviso in L. 1848, Ch. 319, § 6.
* 1904.....	106.....	All
1904.....	146.....	All
1907.....	669.....	1, pt. amending L. 1897, Ch. 417, § 9, as to executors, administrators and other trustees of estates of deceased persons.

Code Civil Procedure §§ 1843, 1859, 1868, 2611, 2628, 2633; § 2634, to and including words "in his office"; § 2660, words "If a surviving husband" to "creditors of the husband"; §§ 2694, 2703, 2704, 2732; § 2733, except last two sentences; § 2734.

* Added to schedule by L. 1909, ch. 240, § 106.

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THE STATE STATUTES

ALABAMA.

This State has levied no inheritance tax since 1868.

The State Constitution, section 219, prohibits a direct inheritance tax and limits any collateral inheritance tax to two and one-half per cent.

ALASKA.

Levies no inheritance taxes.

ARIZONA.

Taxes all property of nonresidents within the state.

TABLE OF GRADED RATES.

CLASSIFICATION OR RELATIONSHIP	Property exempt	Application of rates to value of inheritance or bequest			
Grandparents, parents, husband, wife, child, brother, sister, wife or widow of son, husband of daughter adopted or mutually acknowledged child, or any lawful lineal descendant.	Where whole estate less than \$10,000 no tax.	1% on all above \$5,000.			
	Exempt \$5,000.				
Uncle, aunt, niece, nephew or lineal descendant of the same.	Where whole estate valued at less than \$5,000 no tax. Exemption \$2,000.	2% on all above \$2,000.			
All others.	Exemption \$500.	Up to \$10,000 in excess of exemption	\$10,000 to \$20,000	\$20,000 to \$50,000	All in excess of \$50,000
		3%	4%	5%	6%

LAWS OF 1912, CHAPTER 15. BECAME A LAW JUNE 8, 1912.

Section 1. All property within the jurisdiction of the state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by statutes of inheritance of this or any other state, or by deed, grant, bargain, sale, or gift, made in contemplation of the death of the grantor, or bargainor, or intended to take effect in possession or enjoyment after the death of the grantor, bargainor, or donor, to any person or persons, or to any body, or bodies, politic or corporate, in trust or otherwise, or by reason whereof any person, or body politic or corporate, shall become beneficially entitled, in possession or expectation, to any property or income thereof, shall be and is subject to a tax at the rate hereinafter specified in section 2 of this act, to be paid to the state treasurer for the use of the state; and all heirs, legatees, and devisees, administrators, executors, and trustees, and any such grantee under a conveyance, and any such donee under a gift, made during the life of the grantor

or donor, shall be respectively liable for any and all such taxes with interest thereon until the same shall have been paid, as hereinafter provided.

§ 2. Establishes the rates and exemptions as shown in the above table.

§ 3. Provides that taxes shall accrue at death, are payable in eight months but on contingent remainders tax suspended until they fall in.

§ 4. Provides that executors shall deduct tax where devise or inheritance is in money or collect it from beneficiary after valuation where it is in property and shall not deliver it until tax is paid.

§ 5. Provides that the tax shall be paid to the state treasurer who must give a voucher which must be produced on final accounting unless a bond has been filed as provided in section 13.

§ 6. Every tax imposed by this act shall be a lien upon the property embraced in any inheritance, devise, bequest, legacy, or gift, until paid, and the person to whom such property is transferred, and the administrators, executors, and trustees of every estate embracing such property shall be personally liable for such tax until its payment, to the extent of the value of such property; and provided, further, that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be conclusively presumed to be paid and cease to be a lien as against the estate, or any part thereof, of the decedent.

§ 7. If such tax is paid within eight (8) months from the accruing thereof, a discount of five per centum (5%) shall be allowed and deducted therefrom. If such tax is not paid within eight (8) months from the accruing thereof, interest shall be charged and collected thereon at the rate of eight per centum (8%) per annum from the time the tax is due and payable unless by reason of claims upon the estate, necessary litigation, or other unavoidable delay such tax cannot be determined and paid as herein provided, in which case interest at the rate of six per centum (6%) per annum shall be charged upon such tax from the time from the accruing thereof until the cause of such delay is removed, after which eight per centum (8%) shall be charged. In all cases when a bond shall be given, under the provisions of section 13 of this act, interest shall be charged at the rate of six per centum (6%) from the accrual of the tax until the date of the payment thereof.

§ 8. Gives power of sale to pay tax in same manner as to pay debts.

§ 9. Provides that where a legacy is made a charge on any property the heir or devisee shall deduct the tax and pay it and the tax remains a lien on the property so charged until paid and payment may be enforced in the same manner as payment of the legacy or by county attorney.

§ 10. Provides that where a tax has been erroneously paid it shall be refunded if the application is made within three years of the payment.

§ 11. If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligations in the state standing in the name of the decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the state treasurer on or before the transfer thereof, and no such assignment or transfer shall be valid unless such tax is paid.

§ 12. No safe deposit company, trust company, bank, corporation, or other institution, person, or persons, holding securities or assets of a decedent, or corporation in which said decedent, at the time of his death, owned any stock, shall deliver or transfer the same to the executors, administrators, or legal representatives of said decedent, or upon their order or request, unless notice of the said time and place of such intended transfer be served upon the state treasurer in writing at least five days prior to the said transfer; and it shall be lawful for the said state treasurer, personally or by representative, to examine said securities prior to the time of such delivery or transfer. If upon such examination the state treasurer, or his said representative, shall, for any cause, deem it advisable that such securities or assets should not be immediately delivered or transferred, he may forthwith notify, in writing, such company, bank, institution, or person, to defer delivery or transfer thereof for a period not to exceed ten (10) days from the date of such notice, and thereupon it shall be the duty of the party notified to defer such delivery until the time stated in such notice, or until the revocation thereof within such ten (10) days; failure to serve the notice first above-mentioned or to

allow such examination, or to defer the delivery of such securities or assets for the time stated in the second of said notices, shall render said safe deposit company, trust company, corporation, bank, or other institution, person or persons, liable to the payment of the tax due on said securities or assets, pursuant to the provisions of this act.

§ 13. Any person or corporation beneficially interested in any property chargeable with a tax under this act, and executors, administrators, and trustees, thereof, may elect, within six (6) months from the death of the decedent, not to pay such tax until the person or persons beneficially interested therein shall come into actual possession or enjoyment thereof. If it be personal property, the person or persons so electing shall give a bond to the state in the penal sum of three times the amount of such tax, with such sureties as the superior judge of the proper county may approve, conditioned upon the payment of such tax and interest thereon, at such time and period as the person or persons beneficially interested therein may come into actual possession or enjoyment of such property, which bond shall be executed and filed, and a full return of such property upon oath made to the superior court within six (6) months from the date of transfer thereof, as herein provided, and such bond must be renewed every five years.

§ 14. Provides that where there is a bequest to executors in lieu of commissions the amount in excess of a reasonable commission is taxable.

§ 15. Gives to the superior court having jurisdiction to grant letters testamentary or of administration jurisdiction over all questions arising under the statute.

§ 16. Requires the judge to notify the state treasurer of an application for letters and to assess the tax. The state treasurer may apply for letters as a creditor.

§ 17. Requires the executor or administrator within one month of his appointment to make an inventory and appraisal and file it with the clerk of the court.

§ 18. Upon application the court may extend the time to three months.

§ 19. Every executor or administrator, or trustee of any estate subject to the tax herein provided, shall, at least ten days prior to the first appraisal thereof, as provided by law, notify the state treasurer in writing of the time and place of such appraisal, and shall file due proof of such notice with a copy thereof with the clerk of the court having jurisdiction of such estate or trust. Every executor, administrator, or trustee, within ten days after such appraisal, or appraisal of any beneficial interest or reappraisal thereof, and before payment and distribution to the legatees or any parties entitled to beneficiary interest therein, shall make and render to the said state treasurer a copy of the said inventory and appraisal, duly certified as such by the clerk of the court having jurisdiction of said estate, and shall also make and file with the said state treasurer a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share, together with the amount of tax which has accrued or will accrue thereon, verified by his oath or affirmation, to be administered and certified thereon by some magistrate or officer having lawful power to administer such oaths, in such form and manner as may be prescribed by the state treasurer, which schedule, list, or statement, shall contain the name of each and every person entitled to any beneficiary interest therein, together with the clear value of such interest therein, as found and determined by the court having jurisdiction of said estate. One of said schedules shall be kept and retained by the state treasurer, and the other delivered by him to the secretary of state.

§ 20. Provides that the court may accept the above appraisal or order as a reappraisal, wholly or in part.

§ 21. Provides for the appointment of an appraiser in such case.

§ 22. Every inheritance, devise, bequest, legacy, or gift, upon which a tax is imposed under this act, shall be appraised at its full and true value immediately upon the death of the decedent, or as soon thereafter as may be practicable; provided, however, that when such devise, bequest, legacy, or gift, shall be of such a nature that its full and true value cannot be ascertained at

such time, it shall be appraised in like manner at the time when such value first becomes ascertainable. The value of every future or contingent or limited estate, income, interest, or annuity dependent upon any life or lives in being, shall be determined by the rules or standard of mortality, and of value commonly used by actuaries' combined experience tables, except that the rates of interest in computing the present value of all future and contingent interest or estate shall be four per centum (4%) per annum.

§ 23. Provides for proceedings before the appraiser and notice to the parties interested.

§ 24. Requires the court to fix the tax on the appraiser's report or that it may value the property and fix the tax without an appraiser.

§ 25. Requires the court to give notice by mail to all parties interested of the valuation and assessment.

§ 26. Provide for filing objections to the assessment, rehearing, affirmance or reappraisal and appeal by any party in interest to the supreme court.

§ 27. Provides for the collection of delinquent taxes by the county attorney on motion of the state treasurer.

§ 28. Provides that the secretary of state shall furnish books and forms and for the compilation of data regarding decedent's estate by the court clerks.

§ 29. Provides for quarterly reports by the judges of the superior court and the county recorders.

§ 30. Requires the state treasurer to furnish copies of transfer tax receipts on payment of a fee of twenty-five cents.

§ 31. Makes a similar provision in regard to county recorder's receipts.

§ 32. Whenever an estate charged, or sought to be charged, with the inheritance tax, is of such a nature or is so disposed that the liability of the estate is doubtful, or the value thereof cannot with reasonable certainty be ascertained under the provisions of law, the state treasurer may, with the written approval of the attorney-general, which approval shall set forth the reasons therefor, compromise with the beneficiaries or representatives of such estates, and compound the tax thereon; but said settlement must be approved by the superior court having jurisdiction of the estate, and after such approval the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate.

§ 33. Requires executors, administrators and trustees to send certified copies of their reports to the state treasurer.

§ 34. Provides for appeals in transfer tax proceedings in the same manner that other appeals are taken from the superior court.

§ 35. Imposes a fine of \$500 for willfully secreting a last will of a decedent.

§ 36. Provides a similar fine for administering the estate of decedent without proving the will or taking out letters of administration within six months.

§ 37. Requires administrators or executors to notify the state treasurer when any real estate of a decedent passes to any body politic or corporate directly or in trust.

§ 38. Except as to real property located outside of the state passing in fee from the decedent owner, the tax imposed under section 2 shall hereafter be assessed against and be collected from property of every kind, which, at the death of the decedent owner, is subject to, or thereafter, for the purpose of distribution, is brought into this state and becomes subject to the jurisdiction of the courts of this state for distributive purposes, or which was owned by any decedent domiciled within the state at the time of the death of such decedent, even though the property of said decedent so domiciled was situated outside of the state.

§ 39. In case of any property belonging to a foreign estate, which estate in whole or in part is liable to pay an inheritance tax in this state, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator, or trustee, of such foreign estates files with the clerk of the court having ancillary jurisdiction, and with the state treasurer, duly certified statements exhibiting the true market value of the entire estate of the decedent owner,

and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate.

§ 40. Prohibits additional compensation to any officer by reason of any additional duties imposed by the act.

§. 41. Provides for refund to state treasurer of any expenses incurred in enforcing the tax.

§ 42. Provides fine and imprisonment against an appraiser accepting a fee or reward from executors, heirs or devisees.

§ 43. All acts and parts of acts in conflict herewith are hereby repealed.

Prior Statutes.—No inheritance tax prior to 1912.

ARKANSAS.

Adopts the New York distinction between tangible and intangible property as to non-residents except that it taxes stocks and bonds of Arkansas corporations and of foreign corporations owning property within the State.

TABLE OF GRADED RATES.

CLASSIFICATION OR RELATIONSHIP	Application of rates to value of inheritance or bequest						All in excess of \$1,000,000
	Property exempted	On excess of exemption up to \$5,000. See sec. 3, subd. 4	\$5,000 to \$10,000	\$10,000 to \$30,000	\$30,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000
Father, mother, husband, wife, child, brother, sister, wife or widow of a son, husband of a daughter, adopted or mutually acknowledged child.	Widow or minor child, \$3,000; others, \$1,000.	1%	2%	3%	4%	5%	6%
All others. (Except charitable corporations, etc., mentioned in section 3.)	\$500	*3%	6%	9%	12%	15%	18%
							21%
							8%
							24%

NOTE.— Increased to 4%, by L. 1917.

Chapter 197, L. 1913, as amended by L. 1915, approved March 23, 1915, and L. 1917.

Section 1. (1) The words "estate" and "property" as used in this act, shall be taken to mean the property or interest therein, passing or transferring to any individual or corporate legatees, devisees, heirs, next of kin, grantees, donees or vendees, including the widow's dower, or any property in any way granted, given or devised to the widow in lieu of dower, and the husband's courtesy, or any gift, grant or bequest by the wife to the husband, and not as the property or interest therein of the decedent, donor or vendor, and shall include all property or interest therein, whether situated within or without the state. Provided, five thousand (\$5,000.00) dollars of the market value of the widow's dower or the husband's courtesy shall be exempt from taxation. [As amended by L. 1917.]

(2) The words "tangible property" as used in this act shall be taken to mean corporeal property, such as real estate and goods, wares and merchandise, and shall not be taken to mean money, deposits in banks, shares of stock, bonds, notes, credits or evidences of an interest in property or evidences of debt.

(3) The words "intangible property" as used in this act shall be taken to mean incorporeal property, including money, deposits in bank, shares of stock, bonds, notes, credits, evidences or an interest in property and evidences of debt.

(4) The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift in the manner herein prescribed.

§ 2. A tax shall be and is hereby imposed upon the transfer of any tangible property within the state and of intangible property or any interest therein or income therefrom in trust or otherwise, to persons or corporations in the following cases, subject to the exceptions and limitations hereinafter prescribed.

(1) When a transfer is by will or by the intestate laws of this state of any intangible property or of tangible property within the state from any person dying seized or possessed thereof while a resident of the state.

(2) When the transfer is by will or by the interstate laws of this state of tangible property within the state, or intangible property consisting of shares of stock or of bonds of corporations organized and existing under the laws of Arkansas; or if intangible property, consisting of shares of stock or of bonds of foreign corporations owning property within the state of Arkansas, and the decedent was a nonresident of the state at the time of his death; provided, that in the case of stocks or bonds held by a nonresident decedent in a foreign corporation, owning property within this state, the value of such stock for the purposes of this act shall be taken to be that proportion of its true value, which the physical property of such corporation located in this state bears to the total physical property of such corporation wherever located.

(3) When the transfer is of intangible property or of tangible property within the state made by a resident, or of tangible property within the state made by a nonresident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

(4) When any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof of any such transfer.

(5) Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act.

(6) The tax imposed hereby shall be upon the clear market value of such property, and shall be and remain a lien upon the property transferred until paid.

§ 3. The following exemptions from the tax are hereby allowed:

(1) All property transferred in good faith to societies, corporations and institutions now or hereafter exempted by law from taxes, or to any public

corporation or to any society, corporation, institution or association of persons engaged in or devoted to any charitable, benevolent, educational, public or other like work (pecuniary profit not being its object or purpose) or to any person, society, corporation, institution or association of persons in trust for or to be devoted to any charitable, benevolent, educational or public purpose, by reason whereof any such person or corporation shall become beneficially entitled in possession or expectancy to any such property or to the income thereof, shall be exempt.

(2) Property of the clear value of three thousand dollars (\$3,000.00) transferred to a widow or to a minor child of the decedent, and of one thousand dollars (\$1,000.00) transferred to each of the persons described in the first subdivision of section 4, shall be exempt.

(3) Property of the clear value of five hundred dollars (\$500.00) transferred to any person or corporation other than the persons described in said first subdivision of section 4.

(4) Provided, that when any estate on which the tax is due is large enough to pay the tax in full and leave a sum equal to or greater than the exemptions provided in subdivisions No. 2 and No. 3 of this section, the tax shall be paid on the value of the entire estate without deductions of the exemptions provided by subdivisions No. 2 and No. 3, or any other deduction or abatement whatever.

Sections 4 and 5 fix the rates as shown in the foregoing table.

§ 6. This act shall apply to all transfers from the estates of decedents whose death occurs subsequent to the date when this act takes effect, and not to transfers from estates when the decedent died prior to the taking effect of this act, except as provided in subdivision 5 of section 2.

§ 7. When any grant, gift, legacy or succession upon which a tax is imposed by section 2 of this act shall be an estate, income or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent and the market value thereof determined, in the manner provided in section 13 of this act, and the tax prescribed by this act shall be immediately due and payable to the state treasurer, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid.

§ 8. Taxes excess over reasonable compensation of devise to executors or trustees in lieu of commissions.

§ 9. Provides that taxes are due at death. No interest until after six months. After twelve months a 10 per cent. penalty in addition to the interest except in case of necessary litigation or unavoidable delay but litigation to defeat the tax is not "necessary litigation."

§ 10. (1) Any administrator, executor or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator or trustee shall collect said tax from the heir or devisee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the probate court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees and for such further order relative thereto as the case may require.

(2) And all executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, such sale to be had in the same manner as provided by statute for

the sale of lands of decedents to pay debts of the estate, and the amount of said tax shall be paid as hereinafter directed.

§ 11. Provides that foreign executors or administrators shall not transfer assets within the state without paying the tax and that trust companies, safe deposit companies, banks, etc., shall not deliver securities of a decedent in their possession to an executor or administrator without retaining enough to pay the tax, interest and penalties unless the state treasurer shall consent in writing under a penalty of twice the tax and interest and gives the state treasurer the right to examine said securities.

§ 12. Provides that taxes shall be paid to general fund.

§ 13. Provides for the appointment of appraisers, notice to beneficiaries to fix the market value of property and compute like estates, remainders, annuities, etc., fixes appraiser's compensation and imposes a penalty for accepting fee or reward.

§ 14. Gives the probate court jurisdiction in inheritance tax cases.

§ 15. Provides for collection of delinquent taxes by the attorney-general who may employ counsel. [Repealed by L. 1917.]

§ 16. Provides for the enforcement of tax liens by the attorney-general.

§ 17. Provides for actions to quiet title and to declare that property is not subject to the lien of any tax under this or any former act.

§ 18. Provides that actions under sections 16 and 17 shall be commenced in the probate court.

§ 19. An act, entitled "An act to impose a tax based upon the right of succession to gifts, legacies and inheritances in certain cases, and to provide for the collection of such taxes," approved May 31, 1909, and all acts and parts of acts in conflict with this act are hereby expressly repealed; *provided*, nothing in this act shall be construed to affect or prevent the collection of any inheritance tax which may have become due and payable, and has not yet been paid under the laws in force prior to the passage of this act.

§ 20. Whereas, it is necessary for the immediate preservation of the public peace, health and safety that this act becomes a law immediately; therefore, be it enacted that this act take effect and be in force from and after its passage.

The Act of 1917 adds the following procedure provisions:

§ 3. There is hereby created for a term of twelve (12) years an office to be known as the inheritance tax attorney, for the state of Arkansas, and the governor, with the advice and consent of the Senate shall appoint some person learned in the law, who shall be inheritance tax attorney for the state, for a term of two years, and who shall take and subscribe to the oath of office prescribed by the constitution of this state for officers. The inheritance tax attorney shall have the power to file complaint in the name of the state in the probate court of any county having jurisdiction of the estate, from which any taxes under this act may be due or owing, against the administrator, or executor of such estate, or against the heirs, legatees, beneficiaries or other persons having or claiming to have any interest in said estate, if there is no administrator or executor, alleging that the inheritance tax is due and unpaid, or that the value of said estate upon which the inheritance tax is owing, is unknown. Upon filing of the complaint, a summons shall be issued and served upon the defendants and the case shall stand for trial at the next regular or adjourned term of the court; provided the term shall not begin within ten days from the service of the summons. The case shall be tried before the probate judge without a jury, upon oral testimony or depositions, and he shall render judgment in favor of the state for whatever sum he may find is due by said estate as inheritance taxes. An appeal may be taken from the judgment of the probate court to the circuit court for the plaintiff, without bond, by the inheritance tax attorney filing his motion and prayer therefor, either in the probate court or with the clerk of the circuit court. The defendants, or any of them, may appeal to the circuit court in the same manner as appeals are now taken, or may hereafter be taken, from the probate court.

§ 4. The inheritance tax attorney may examine under oath in the proceeding provided for in section 2 of this act, the administrator, executor,

heirs, legatees, beneficiaries or other person having, or claiming to have any interest in the estate, or any other person having any knowledge of the property of the estate or its value. When it has been determined how much tax is due under this act, the inheritance tax attorney shall certify the amount thereof to the state treasurer, and all taxes shall be paid direct to the treasurer of the state.

§ 5. The inheritance tax attorney shall devote his entire time to the discharge of the duties of his office and shall not engaged in any occupation or business interfering or inconsistent with the duties of his office. He shall receive as his salary the sum of three thousand dollars (\$3,000.00) per annum, payable as other salaries are paid; and in addition thereto, his necessary traveling expenses, which shall be itemized, verified and filed with the auditor of state each month, and when so filed, the auditor shall draw his warrant, separate from any salary warrant, from the amount of his traveling expenses, which shall be deducted from any taxes collected under this act before the same is credited to the general revenue fund.

§ 6. The inheritance tax attorney shall be provided with suitable and necessary offices, furniture, supplies and stationery, and shall also be allowed one stenographer who shall be paid a salary not to exceed seventy-five dollars (\$75.00) per month, to be paid by the state as other salaries are paid.

§ 7. If any non-resident of this state shall die leaving any property in this state subject to taxation under this act, the probate court of any county wherein any of such decedent's property is situated, shall, on petition of inheritance tax attorney, appoint some suitable person administrator of the estate of such decedent, or require the public administrator to take charge of such property until the amount of inheritance tax owing under this act is determined and paid.

§ 8. The probate judge shall not approve the settlement of any administrator or executor until the inheritance taxes due under the inheritance tax laws is paid.

§ 9. Any action provided for by the inheritance tax laws of this state may be brought at any time before the estate is fully administered.

§ 10. Section 15 of Act No. 197 of the Acts of 1913 and all laws and parts of laws in conflict herewith are hereby repealed, and this act being necessary for the immediate preservation of the public peace, health and safety an emergency is hereby declared to exist, and this act shall be in force and effect from and after its passage.

Prior Statutes: L. 1901, Act 156, p. 295; L. 1903, Act 89, p. 153; L. 1907, Act 345, p. 852.; L. 1909, Act 303, p. 904.

CALIFORNIA.

Taxes property of non-residents within the State.

TABLES OF GRADED RATES UNDER STATUTES OF 1911, 1913, 1915 AND 1917.

Under L. 1911: in effect July 1, 1911.

CLASSIFICATION OR INDICATION OF RELATIONSHIP	Property exemption	Application of rates to value of inheritance or bequests				
		On excess after deduction of exemption from \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child.	Widow or minor child, others, \$10,000.	1%	2%	3%	4%	5%
Brother, sister, or descendant of either, wife or widow of a son, husband of a daughter.	\$2,000	2%	4%	6%	8%	10%
Uncle, aunt, or descendant of either.	\$1,500	3%	6%	9%	12%	15%
Grand uncle, grand aunt, or descendant of either.	\$1,000	4%	8%	12%	16%	20%
Other degree of collateral consanguinity, stranger in blood, body politic or corporate.	\$500	5%	10%	15%	20%	25%

TABLE OF RATES AND EXEMPTIONS UNDER LAW OF 1913.
In effect August 15, 1913.

CLASSIFICATION OR INDICATION OF RELATIONSHIP	Property exemption	Application of rates to values of inheritance or bequests					
		On excess after deduction of exemption from \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$250,000	\$250,000 to \$500,000	In excess of \$1,000,000
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child.		1%	2%	3%	4%	5%	10%
Brother sister, or descendant of either, wife or widow of a son husband of a daughter.	\$2,000	2%	4%	6%	8%	10%	15%
Uncle, aunt, or descendant of either.	\$1,500	3%	6%	9%	12%	15%	20%
Grand uncle, grand aunt, or descendant of either.	\$1,000	4%	8%	12%	16%	20%	25%
Other degree of collateral consanguinity, stranger in blood, body politic or corporate.	\$500	5%	10%	15%	20%	25%	30%

TABLE OF RATES AND EXEMPTIONS UNDER AMENDMENT OF 1915.
In effect August 8, 1916, and continued by ch. 889, L. 1917.

CLASSIFICATION OR INDICATION OF RELATIONSHIP	Property exemption	Application of rates to value of inheritance or bequests					
		On excess after deduction of exemption from \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$200,000	\$200,000 to \$500,000	In excess of \$1,000,000
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child.	Widow or minor child, \$24,000; others, \$10,000	1%	2%	4%	7%	10%	15%
Brother, sister, or descendant of either, wife or widow of a son, husband of a daughter.	\$2,000	8%	6%	9%	12%	15%	25%
Uncle, aunt, or descendant of either.	\$1,000	4%	8%	10%	15%	20%	30%
Other degree of collateral consanguinity, stranger in blood, body politic or corporate, excepting charities, exempted by section 6, subdivision 1	\$500	5%	10%	15%	20%	25%	30%

California has adopted an entirely new statute. Approved May 23, 1917, but it does not change the rates established in 1915 and shown in the foregoing table.

The new statute is in full as follows:

CHAPTER 589.

An Act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and by any act hereby repealed and for suits to quiet title against claims of liens arising hereunder, or under an act hereby repealed, to be known as the "inheritance tax act"; and to repeal chapter five hundred ninety-five of the laws of the session of the legislature of California of 1913, approved June 16, 1913, known as the "inheritance tax act," and all amendments thereto, and to repeal all acts and parts of acts in conflict with this act.

In effect July 27, 1917.

The people of the State of California do enact as follows:

SECTION 1. (1) This act shall be known as the "inheritance tax act."

(2) The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor, or donor passing or transferred to individual legatees, devisees, heir, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the state; *provided*, that for the purpose of this act the one-half of the community property which goes to the surviving wife, on the death of the husband, under the provisions of section one thousand four hundred two of the civil code, shall not be deemed to pass to her as heir to her husband, but shall, for the purpose of this act, be deemed to go, pass, or be transferred to her for valuable and adequate consideration and her said one-half of the community shall not be subject to the provisions of this act; *provided, further*, that in case of a transfer of community property from the husband to the wife, within the meaning of subdivision (3) or (5) of section two of this act, one-half of the community property so transferred shall not be subject to the provisions of this act; *and provided, further*, that the presumption that property acquired by either husband or wife after marriage is community property, shall not obtain for the purpose of this act as against any claim by the state for the tax hereby imposed; but the burden of proving such property to be community property shall rest upon the person claiming the same to be community property.

(3) The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described.

(4) The word "decendent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor.

(5) The words "county treasurer" and "inheritance tax appraiser," as used in this act, shall be taken to mean the treasurer or the inheritance tax appraiser of the county of the superior court having jurisdiction as provided in section fifteen of this act.

§ 2. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted, to be paid to the treasurer of the proper county, as hereinafter directed, for the use of the state, said taxes to be upon the market value of such property at the rates hereinafter prescribed and only upon the excess over the exemptions, hereinafter granted, in the following cases:

(1) When the transfer is by will or by the intestate or homestead laws of this state, from any person dying seized or possessed of the property while a resident of the state, or by any order of court setting apart property pursuant to article one, chapter five, title eleven, part three of the Code of Civil Procedure.

(2) When the transfer is by will or intestate laws of property within this state and the decedent was a nonresident of the state at the time of his death, or by any order of court setting apart property pursuant to article one, chapter five, title eleven, part three of the Code of Civil Procedure.

(3) When the transfer is of property made by a resident, or by a non-resident when such non-resident's property is within this state, by deed, grant, bargain, sale, assignment or gift, made without valuable and adequate consideration (i. e., a consideration equal in money or in money's worth to the full value of the property transferred):

(a) In contemplation of the death of the grantor, vendor, assignor or donor, or,

(b) Intended to take effect in possession or enjoyment at or after such death.

When such person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or the income therefrom, by any such transfer, whether made before or after the passage of this act.

(4) The words "contemplation of death," as used in this act, shall be taken to include that expectancy of death which actuates the mind of a person on the execution of his will, and in nowise shall said words be limited and restricted to that expectancy of death which actuates the mind of a person making a gift *causa mortis*; and it is hereby declared to be the intent and purpose of this act to tax any and all transfers which are made in lieu of or to avoid the passing of property transferred by testate or intestate laws.

(5) Whenever property, real or personal, is held in the joint names of two or more persons, or is deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons, the right of the surviving joint tenant or joint tenants, person or persons to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this act in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased joint tenant or joint depositor and had been devised or bequeathed to the surviving joint tenant or joint tenants, person or persons, by such deceased joint tenant or joint depositor by will, excepting therefrom such part thereof as may be proved by the surviving joint tenant or joint tenants to have originally belonged to him or them and never to have belonged to the decedent.

(6) Whenever any person, trustee or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made, shall be deemed a transfer taxable under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; and whenever any person, trustee or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons, trustees or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

(7) Whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devise, or residuary legacies exceeds what would be a reasonable compensation for their services, such excess over and above the exemptions herein provided for shall be liable to said tax; and the superior court in which the probate proceedings are pending shall fix the compensation.

(8) Where any property shall, after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any

person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had been acquired such increase from the person from whom the title to their respective estates or interests is derived.

(9) When more than one transfer within the meaning of any of the preceding subdivisions of this section has been made, either before or after the passage of this act, by a decedent to one person, the tax shall be imposed upon the aggregate market value of all of the property so transferred to such person in the same manner and to the same extent as if all of the property so transferred were actually transferred by one transfer.

(10) In determining the market value of the property transferred, no deduction shall be made for any inheritance tax or estate tax paid to the government of the United States.

§ 3. Such taxes shall be and remain a lien upon the property passed or transferred until paid; *provided*, that said lien shall be limited to the property chargeable therewith, and the person to whom the property passes or is transferred, and all administrators, executors and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. The provisions of the Code of Civil Procedure relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty prescribed by this article, and this section shall be construed as having been in effect as of date of the original enactment of the inheritance tax law; *provided*, that unless sued for within five years after they are due and legally demandable, such taxes, or any taxes accruing under any act herein repealed, shall cease to be a lien as against any *bona fide* purchaser of said property; *and provided*, that no such lien shall cease within two years from the date of the passage of this act.

§ 4. When the property of any beneficial interest therein so passed or transferred exceeds in value the exemption hereinafter specified and shall not exceed in value twenty-five thousand dollars, the tax hereby imposed shall be:

(1) Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal ancestor, lineal issue of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent (*provided, however*, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter), or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

(2) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of a descendant of a brother or sister of a decedent, a wife or widow of a son, or the husband of a daughter of the decedent at the rate of three per centum of the clear value of such interest in such property.

(3) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

(4) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property.

§ 5. (1) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision one of section four exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, two per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, four per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, seven per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, ten per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars and up to one million dollars, twelve per centum of such excess.

(f) Upon all in excess of one million dollars, fifteen per centum of such excess.

(2) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision two of section four exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, six per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, nine per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, twelve per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, fifteen per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars and up to one million dollars, twenty per centum of such excess.

(f) Upon all in excess of one million dollars, twenty-five per centum of such excess.

(3) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision three of section four exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, eight per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, ten per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, fifteen per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, twenty per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars and up to one million dollars, twenty-five per centum of such excess.

(f) Upon all in excess of one million dollars, thirty per centum of such excess.

(4) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision four of section four exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, ten per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, fifteen per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, twenty per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, twenty-five per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars, thirty per centum of such excess.

§ 6. The following exemptions from the tax are hereby allowed:

(1) All property transferred to societies, corporations, and institutions now or hereafter exempted by law from taxation, or to any public corporation, or to any society, corporation, institution, or association of persons

engaged in or devoted to any charitable, benevolent, educational, public or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institution, or association of persons in trust for or to be devoted to any charitable, benevolent, educational, or public purpose, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof, shall be exempt; *provided, however*, that such society, corporation, institution or association be organized or existing under the laws of this state or that the property transferred be limited for use within this state.

(2) Property of the clear value of twenty-four thousand dollars, transferred to the widow or to a minor child of the decedent, and of ten thousand dollars transferred to each of the other persons described in the first subsection four, shall be exempt.

(3) Property of the clear value of two thousand dollars, transferred to each of the persons described in the second subdivision of section four, shall be exempt.

(4) Property of the clear value of one thousand dollars, transferred to each of the persons described in the third subdivision of section four, shall be exempt.

(5) Property of the clear value of five hundred dollars, transferred to each of the persons and corporations described in the fourth subdivision of section four, shall be exempt.

§ 7. (1) All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and if the same are paid within eighteen months, no interest shall be charged and collected thereon, but if not so paid, interest at the rate of ten per centum per annum shall be charged and collected from the time said tax accrued; *provided*, that if said tax is paid within six months from the accruing thereof a discount of five per centum shall be allowed and deducted from said tax. And in all cases where the executors, administrators, or trustees do not pay such tax within eighteen months from the death of the decedent, they shall be required to give a bond for the payment of said tax, together with interest.

(2) The penalty of ten per cent per annum imposed by subdivision (1) of this section for the nonpayment of said tax, shall not be charged in cases where, in the judgment of the court, by reason of claims made upon the estate necessary litigation, or other unavoidable cause of delay, the estate of any decedent, or a part thereof, can not be settled at the end of eighteen months from the death of the decedent; but in such cases seven per cent per annum shall be charged upon the said tax from the expiration of said eighteen months until the cause of such delay is removed, after which ten per cent interest per annum shall again be charged until the tax is paid; but litigation to defeat the payment of the tax shall not be considered necessary litigation.

§ 8. (1) When any grant, gift, legacy, devise or succession upon which a tax is imposed by section two of this act shall be an estate, income, or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion, or other expectancy, real or personal, the entire property or fund by which such estate, income, or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent, and the market value thereof determined, in the manner provided in section sixteen or seventeen of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid.

(2) In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent incumbrance thereon, nor on account of any contingency upon the happening of which the estate or property or some part thereof or interest therein might be abridged, defeated or diminished; *provided, however*, that in the event of such encumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall

be made to the person properly entitled thereto of a proportionate amount of such tax on account of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section eleven hereof upon order of the court having jurisdiction.

(3) When property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended, or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred; *provided, however*, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this act, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this act; such return of overpayment shall be made in the manner provided by section eleven of this act, upon order of the court having jurisdiction; *provided*, that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax or the trustees thereof may elect not to pay the same until such person or persons, or body politic or corporate beneficially interested in such property shall come into the actual possession or enjoyment thereof, and in that case such person or persons or body politic or corporate or trustees shall execute a bond to the people of the State of California in a penalty of twice the amount of said tax with such sureties as the said superior court may approve, conditioned for the payment of said tax and interest thereon at the rate of seven per cent. per annum commencing at the expiration of eighteen months from the death of the decedent at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, and conditioned further, that if said bond be not renewed and the returns made as herein provided, the amount of said tax and interest thereon shall immediately become due and payable. Said bond shall be filed in the office of the county clerk of the proper county and a certified copy thereof shall be immediately transmitted to the state controller; *provided, further*, that such person or persons or body politic or corporate, or trustees, shall enter into such security within a period of ninety days after the entry of the order or decree fixing the inheritance tax charged against such transfer, or within such period thereafter as the court may in its discretion permit, and shall make a full and verified return of such property to said court and file the same in the office of the county clerk within one year from the date of such order or decree fixing tax, and at such times thereafter as the court on the application of the state controller may require, and renew such security every five years after the date of the approval thereof. Upon the approval of said bond as herein provided, said tax shall cease to be a lien upon the property so transferred. If such security shall not be renewed before the expiration of each five-year period, said bond shall immediately become due and payable and if the same be not paid forthwith, the attorney general shall file an action in the name of the people of the state on the relation of the controller, to recover the same and the penalties thereunder and no demand for payment shall be necessary before the institution of such suit. Whenever it shall be made to appear to the satisfaction of the court that any surety on such bond or undertaking has for any reason become insufficient, the court may on motion of the state controller, after such notice to such person or persons, body politic or corporate, or trustees as the court may require, order the giving of a new undertaking with sufficient sureties in lieu of such insufficient undertaking. In case such new undertaking so required shall not be given within the time required by such order, or in case the sureties thereon fail to justify thereon when required, all rights obtained by the filing of such

original undertaking, or subsequent undertaking, shall cease and the amount of said tax and interest thereon shall immediately become due and payable.

(4) Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

(5) Where an estate or interest can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

(6) The value of every future, or contingent or limited estate, income or interest, shall, for the purposes of this act be determined by the rule, methods and standards of mortality and of value that are set forth in the actuaries' combined experience tables of mortality for ascertaining the value of policies of life insurance and annuities and for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interest and contingencies shall be five (5) per cent per annum. The insurance commissioner shall without a fee on the application of any superior court or of any inheritance tax appraiser determine the value of any future or contingent estate, income or interest therein limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any such appraiser's application or other facts to him submitted by said appraiser or said court and certify the same in duplicate to such court or appraiser, and his certificate thereof shall be conclusive evidence that the method of computation therein is correct. When an annuity or a life estate is terminated by the death of the annuitant or life tenant, and the tax upon such interest has not been fixed and determined, the value of said interest for the purpose of taxation under this act shall be the amount of the annuity or income actually paid or payable to the annuitant or life tenant during the period for which such annuitant or life tenant was entitled to the annuity or was in possession of the life estate.

§ 9. (1) Any administrator, executor, or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator, or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator, or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the superior court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

(2) All executors, administrators, and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as hereinafter directed.

(3) Every sum of money retained by an executor, administrator, or trustee, or paid into his hands, for any tax on property, shall be paid by him, within thirty days thereafter, to the treasurer of the county in which the probate proceedings are pending.

§ 10. Upon the payment to any county treasurer of any tax due under this act, such treasurer shall issue a receipt therefor, in triplicate, one copy of which he shall deliver to the person paying said tax, and the original and one copy thereof he shall immediately send to the controller of state, whose duty

it shall be to charge the treasurer so receiving the tax with the amount thereof, and said controller shall retain one of said receipts and the other he shall countersign and seal with the seal of his office, and immediately transmit to the clerk of the court fixing such tax. And an executor, administrator, or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed, unless a receipt so sealed and countersigned by the controller, or a copy thereof, certified by him, shall have been filed with the court. Any person shall, upon payment to the county treasurer of the sum of fifty cents, be entitled to a duplicate, or copy, of any receipt that may have been given by said treasurer for the payment of any tax under this act.

§ 11. (1) If any debts shall be proved against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by order of the superior court having jurisdiction, on notice to the state controller, to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the county treasurer; or if such tax has been paid to such county treasurer, such officer shall refund out of any inheritance tax moneys in his hands or custody such equitable proportion of the tax, and credit himself with the same in the account required to be rendered by him under this act.

(2) Where it shall be proved to the satisfaction of the superior court that deductions for debts were allowed upon the appraisal, since proved to have been erroneously allowed, it shall be lawful for such superior court to enter an order assessing the tax upon the amount wrongfully or erroneously deducted.

(3) If, after the payment of any tax in pursuance of an order fixing such tax, made by the superior court having jurisdiction, such order be modified or reversed by the superior court having jurisdiction within two years from and after the date of entry of the order fixing the tax, or be modified or reversed at any time on an appeal taken therefrom within the time allowed by law on due notice to the state controller, the county treasurer shall refund to the executor, administrator, trustee, person or persons by whom such tax was paid, the amount of any moneys paid or deposited on account of such tax in excess of the amount of tax fixed by the order modified or reversed, out of any inheritance tax moneys in his hands or custody, and credit himself with the same in the account required to be rendered by him to the controller on his semi-annual settlement; but no application for such refund shall be made after one year from such reversal or modification, unless an appeal shall be taken therefrom, in which case no such application shall be made after one year from the final determination on such appeal or of an appeal taken therefrom, and the representatives of the estate, legatees, devisees or distributees entitled to any refund under this section shall not be entitled to any interest upon such refund, and the state controller shall deduct from the fees allowed by this act to the county treasurer the amount theretofore allowed him upon such overpayment.

(4) When any amount of said tax shall have been erroneously paid, the superior court having jurisdiction, on application after notice to the state controller, and on satisfactory proof to it, shall by order require the county treasurer to refund and pay to the executor, administrator, trustee, person or persons who had paid any such tax in error the amount of such tax so erroneously paid; *provided*, that all applications for such repayment of such tax so erroneously paid shall be made within one year of the date of the entry of the order fixing tax or of the decree of final distribution of the estate. Such refund shall be made by said treasurer out of any inheritance tax moneys in his hands or custody and he shall credit himself with the same in the account required to be rendered by him to the controller on semi-annual settlement; and the state controller shall deduct from the fees allowed by this act to the county treasurer the amount theretofore allowed him upon such erroneous payment.

(5) This section, as amended, shall apply to appeals and proceedings now pending and taxes heretofore paid in relation to which the period of one year from such reversal or modification has not expired when this section, as amended, takes effect.

§ 12. (1) Whenever the state controller shall have reasonable cause to believe that a tax is due under the provisions of this act, upon any transfer of any property, and that any person, firm, institution, company, association or corporation has possession, custody or control of any books, accounts, papers or documents relating to or evidencing such transfer, the state controller or inheritance tax attorney, or any assistant inheritance tax attorney of the inheritance tax department, is hereby authorized and empowered to inspect the books, records, accounts, papers and documents of any such person, firm, institution, company, association or corporation including the stock transfer book of any corporation, for the purpose of acquiring any information deemed necessary or desirable by said state controller or such inheritance tax attorney or assistant inheritance tax attorneys, for the proper enforcement of this act, and for the collection of the full amount of tax which may be due the state hereunder. Any and all information acquired by said state controller or said inheritance tax attorney or assistant inheritance tax attorneys shall be deemed and held by said state controller and said inheritance tax attorney and assistant inheritance tax attorneys and each of them, as confidential, and shall not be divulged, disclosed or made known by them or any of them except in so far as may be necessary for the enforcement of the provisions of this act. Any controller or ex-controller, or inheritance tax attorney or ex-inheritance tax attorney, or assistant inheritance tax attorney, or ex-assistant inheritance tax attorney, who shall divulge, disclose or make known any information acquired by such inspection and examination aforesaid, except in so far as the same may be necessary for the enforcement of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars, or be imprisoned in the county jail for not more than ninety days, or both.

(2) Any officer or agent of any firm, institution, company, association or corporation having or keeping an office within this state, who has in his custody or under his control any book, record, account, paper or document of such firm, institution, company, association or corporation, and any person having in his custody or under his control such book record, account, paper or document who refuses to give to the state controller, or said inheritance tax attorney, or any of said assistant inheritance tax attorneys, lawfully demanding, as provided in this section, during office hours to inspect or take a copy of the same or any part thereof, for the purposes hereinabove provided, a reasonable opportunity so to do, shall be liable to a penalty of not less than one thousand dollars nor more than twenty thousand dollars, and in addition thereto shall be liable for the amount of the taxes, interest and penalties due under this act on such transfer, and the said penalties and liabilities for the violation of this section may be enforced in an action brought by the state controller in any court of competent jurisdiction.

§ 13. (1) No corporation organized or existing under the laws of this state, shall transfer on its books or issue a new certificate for any share or shares of its capital stock belonging to or standing in the name of a decedent or in trust for a decedent or belonging to or standing in the joint names of a decedent and one or more persons, without the written consent of the state controller or person by him in writing authorized to issue such consent.

(2) No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control or custody or under partial control or partial custody securities, deposits, assets or property belonging to or standing in the name of a decedent who was a resident or non-resident, or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal

representatives, agents, deputies, attorneys, trustees, legatees, heirs, successors in interest of said decedent or to any other person or persons or to the survivor or survivors when held in the joint names of a decedent and one or more persons or under their order or request, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed thereon under this act and unless notice of the time and place of such delivery or transfer be served upon the state controller and county treasurer at least ten days prior to said delivery or transfer; *provided*, that the state controller, or person by him in writing authorized so to do, may consent in writing to said delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligation hereunder to give such notice or to retain any portion of said securities, deposits or other assets in their possession or control. And it shall be lawful for the state controller or county treasurer, personally or by representatives, to examine said securities, deposits or assets at the time of said delivery or otherwise.

(3) Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons, liable to a penalty of not more than twenty thousand dollars, and in addition thereto said safe deposit company, trust company, corporation, bank or other institution, person or persons shall be liable for the amount of the taxes, interest and penalties due under this act on said securities, deposits, or other assets above mentioned, and said penalties and liabilities of said safe deposit company, corporation, bank or other institution, person or persons for the violation of this section may be enforced in an action brought by the state controller in any court of competent jurisdiction.

§ 14. The state controller shall appoint, and may at his pleasure remove, one or more persons in each county of the state to act as inheritance tax appraisers therein. Every such inheritance tax appraiser (in addition to any fees paid him as appraiser under section one thousand four hundred forty-four of the Code of Civil Procedure) shall be paid for his services out of any inheritance tax moneys in the hands of the treasurer of the county in which he may be acting, a reasonable compensation, to be fixed by the superior court of said county, or a judge thereof, and, together with said compensation, said appraiser shall be allowed his actual and necessary traveling and other incidental expenses, and the fees paid such witnesses as he shall subpoena before him, said expenses and fees to be allowed by said superior court or a judge thereof; *provided*, that any claim for any such services or expenditure, must before payment, first receive the approval of the state controller; *and provided*, further, that in any probate proceeding in which the executor or administrator shall have failed to have had the inheritance tax appraiser act as one of the appraisers under section one thousand four hundred forty-four of the Code of Civil Procedure and to have paid him his fees therefor, the expense of making the inheritance tax appraisement in this act provided for shall be paid out of said estate, and the executor or administrator thereof shall be liable for said fee. Any such appraiser who shall take any fee or reward, other than such as may be allowed him by law, from any executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred fifty dollars nor more than five hundred dollars, or be imprisoned in the county jail ninety days or both, and in addition thereto the court shall dismiss him from such service.

§ 15. The superior court in the county in which is situate the real property of a decedent, who was not a resident of the state, or if there be no real property, then in the county in which any of the personal property of such nonresident is situate, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act; the court first acquiring jurisdiction hereunder shall retain the same, to the exclusion of every other; *provided*, that the superior court having acquired jurisdiction in probate of the estate of a decedent shall hear and determine in said

probate proceedings all questions in relation to any tax arising under the provisions of this act: (a) Upon property passing in said probate proceedings. (b) Upon any other property transferred, within the meaning of subdivision three of section two or any other provisions of this act, to any person, institution or corporation taking any property under and by virtue of said probate proceedings.

§ 16. (1) When any superior court, having jurisdiction in probate of the estate of any decedent, or a judge of such court, shall, in accordance with section one thousand four hundred forty-four of the Code of Civil Procedure, appoint the appraiser or appraisers in said section provided for, said superior court or judge thereof shall also at the same time designate and appoint an inheritance tax appraiser (unless such designation and appointment be previously made) to ascertain and report to said superior court the amount of inheritance tax due upon any property passing in said probate proceeding, or a lien thereon, or upon any other property transferred within the meaning of subdivision (3) of section two of this act, or under any other provision of this act, to any person, institution or corporation taking property under and by virtue of said probate proceedings, together with such other or additional information as shall assist said court in the determination of said tax. Thereupon said inheritance tax appraiser shall have all the powers of a referee of said superior court, and shall have jurisdiction to require the attendance before him of the executor or administrator of said estate, or any person interested therein, or any other person whom he may have reason to believe possesses knowledge of the estate of said decedent, or knowledge of any property transferred by said decedent within the meaning of this act, or knowledge of any facts that will aid said appraiser or the court in the determination of said tax. For the purpose of compelling the attendance of such person or persons before him, and for the purpose of appraising any property or interest subject to, or liable for any inheritance tax hereunder, and for the purpose of determining the amount of tax due thereon, the said inheritance tax appraiser is hereby authorized to issue subpoenas compelling the attendance of witnesses before him. Any person or persons who shall be served with a subpoena issued by said inheritance tax appraiser, to appear and testify or to produce books and papers, and who shall refuse and neglect to appear and testify or to produce books and papers relevant to such appraisal, as commanded in such subpoena, shall be guilty of a contempt of court. And he may examine and take the evidence of such witnesses or of such executor or administrator, or other person under oath concerning such property and the value thereof, and concerning the property or the estate of such decedent subject to probate, and concerning any transfer made by such decedent within the meaning of this act. Upon the completion of his inheritance tax appraisal in any probate proceeding, the inheritance tax appraiser shall make a report in writing to the superior court of the clear market value of the several interests in the estate of the decedent, and shall report the amount of inheritance or transfer tax chargeable against, or a lien upon such interests, acquired by virtue of said probate proceedings or by any transfer within the meaning of this act, to any person, institution or corporation acquiring any property by virtue of said probate proceedings together with such other facts as may advise the court in regard thereto, or which the court may require, and may return to said superior court such depositions as he may have had reduced to writing, exhibits, or other testimony or information taken before him, or submitted to him.

(2) Upon the filing of said report said appraiser shall mail a copy thereof to the state controller and the clerk of said superior court shall on said day or the next succeeding judicial day give notice of such filing to all persons interested in such proceedings by causing notices to be posted in at least three public places in the county, one of which must be the place where the court is held, and in addition thereto shall mail to the state controller and to all persons chargeable with any tax in said report who have appeared in such proceeding, a copy of said notice. At any time after the expiration of ten days thereafter, if no objection to said report be filed, the said superior court or a judge thereof, may, without further notice give and make its order confirming

said report and fixing the tax in accordance therewith. At any time prior to the making of said order, any person interested in said proceeding (including the state controller) may file objections in writing to said report. Thereupon said superior court shall, by order, fix a time, not less than ten day thereafter, for the hearing thereof, and shall direct the clerk of said superior court to give such notice thereof as it shall deem necessary; *provided*, that a copy of such notice and of such objections shall be forthwith mailed to the state controller, county treasurer and inheritance tax appraiser. Upon the hearing of said objections, said court may make such order as to it may seem meet and proper in the premises.

(3) If, upon examination of the executor or administrator of said estate or other persons familiar with the affairs of such decedent, or from other information before him, it shall appear to the inheritance tax appraiser that there is no inheritance tax due out of said estate or a lien upon any property or interest therein, said appraiser may so certify to the superior court, and at any time thereafter, if no objection to said certificate shall have been filed, said superior court or a judge thereof may, without further notice, make an order or decree that there are no inheritance taxes due out of said estate or upon any interest therein or may make such different order as may to it seem meet in the premises. Such order shall be conclusive only as to such property as may have been returned in the inventory or inventory and appraisement in said probate proceedings.

§ 17. (1) If it shall appear to the superior court upon petition of the state controller that any transfer has been made within the meaning of this act, and the taxability thereof, and the liability for such tax and the amount thereof have not been determined, and that no proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor and the amount thereof may be determined, said court shall issue a citation ordering and directing the persons who may appear liable therefor or known to own any interest in or part of the property transferred, to appear before said court or before an inheritance tax appraiser to be designated by said order at a time and place in said order named, not less than ten days nor more than one year from the date of such order, to be examined, under oath by said court or by said appraiser as the case may be, concerning said transfer and all facts connected therewith, and concerning the property transferred and the character and value thereof.

If said person or persons shall be directed to appear before said appraiser said appraiser shall, at the time and place in said order named, or at such time and place to which said appraiser may adjourn said hearing, proceed to examine said person or persons and such witnesses as said appraiser may subpoena before him, and for the purpose of said hearing, and for the purpose of ascertaining any facts concerning the taxability of said transfer or any taxes due on account of such transfer, said appraiser shall have the powers of a referee of said court, and, is hereby authorized to issue subpoenas compelling the attendance of witnesses before him, and to administer oath, and to take the evidence of such witnesses under oath concerning such property and the value thereof and concerning such transfer. Said appraiser shall report to said court his findings and conclusions in relation to said transfer and said tax, and may return to said court, any depositions, exhibits or other testimony or information taken before him or exhibited to him. The procedure subsequent to the filing of said report shall conform to subdivision (2) of section sixteen of this act.

Except as herein otherwise provided, the service of such citation and the time, manner and proof thereof, and the hearing and determination thereon, and the hearing and determination upon the facts returned in such report, and the enforcement of the determination or decree, shall conform to the provisions of chapter twelve, title eleven, part three of the Code of Civil Procedure, and the clerk of the court shall, upon the request of the state controller, furnish, without fee, one or more transcripts of such decree, and the same shall be docketed and filed by the county clerk of any county in the state, without fee, in the same manner and with the same effect as provided by section six hundred seventy-four of said Code of Civil Procedure for filing a transcript of an original docket.

The superior court may hear the said cause upon the relation of the parties and the testimony of witnesses and evidence produced in open court, and, if the court shall find said property is not subject to any tax, as herein provided, the court shall, by order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases.

(2) Verified petitions may be filed by any interested party with the superior court alleging and admitting that a transfer within the meaning of this act has been made and the taxability thereof and the liability for such tax and the amount thereof have not been determined, and that no proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor and the amount thereof, may be determined, and that the petitioner desires such determination and desires to pay said tax, if any be due. Upon the filing of such petition the superior court or a judge thereof shall by order designate and appoint an inheritance tax appraiser to ascertain and report to said court the amount of the inheritance tax, if any, due by said petitioner on account of such transfer, and shall fix a time and place, not less than ten days thereafter, for the hearing of said matter before said inheritance tax appraiser, a copy of which petition and order shall be forthwith mailed to the state controller, and shall refer said petition and said matter to said inheritance tax appraiser who shall have all of the powers of a referee of said court, including the powers prescribed in subdivision (1) of section sixteen of this act. The procedure subsequent to said reference to said appraiser shall conform to the provisions of subdivisions (1) and (2) of section sixteen of this act.

In the event that final judgment is rendered in said proceeding, ascertaining and determining that no inheritance tax is due on account of said transfer or that the amount of the tax to which said transfer is liable, is less than twenty dollars the court shall, in addition to the amount of the tax, if any, include in such judgment and assess against the petitioner reasonable compensation for said inheritance tax appraiser, not exceeding the sum of ten dollars, and the necessary traveling and incidental expenses of said appraiser.

(3) Actions may be brought against the state by any interested person for the purpose of quieting the title to any property against the lien or claim of lien of any tax or taxes under this act, or for the purpose of having it determined that any property is not subject to any lien for taxes nor chargeable with any tax under this act. No such action shall be maintained where any proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor and the amount thereof may be determined. All parties interested in said transfer and in the taxability thereof shall be made parties thereto and any interested person who refuses to join as plaintiff therein may be made a defendant. Summons for the state in said action shall be served upon the state controller.

At any time after issue is joined in such action the court, on its own motion, or upon the motion of any interested party, may by order appoint and designate an inheritance tax appraiser to hear said matter and report to the court thereon and shall in such order fix a time and place for the hearing of said matter before said inheritance tax appraiser, and direct notice of such time and place to be given in such manner as the court shall deem proper, and shall refer said matter to said inheritance tax appraiser who shall have all of the powers of a referee of said court, including the powers prescribed in subdivision (1) of section sixteen of this act. The procedure subsequent to said reference to said appraiser shall conform to the provisions of subdivisions (1) and (2) of section sixteen of this act.

Should the court determine that the property described in the complaint is subject to the lien of said tax and that said property has been transferred within the meaning of this act, the court shall award affirmative relief to the state in said action, and judgment shall be rendered therein in favor of the state, ascertaining and determining the amount of said tax, and the persons or persons liable therefor, and the property chargeable therewith or subject to lien therefor, and shall assess against such person or persons rea-

sonable compensation for said inheritance tax appraiser and his necessary traveling and incidental expenses.

(4) Actions under this section shall be commenced in the superior court of the county in which is situated any part of any real property against which any lien is sought to be enforced, or to which title is sought to be quieted against any lien, or claim of lien; but if in said action no lien against real property is sought to be enforced, the action shall be brought in the superior court of the county which has or which had jurisdiction of the administration of the estate of the decedent mentioned herein.

(5) No fee shall be charged said state controller by any public officer in this state for the filing or recording of any petition, lis pendens, decree or order, or for the taking of oaths or acknowledgments in any proceeding taken under this act; nor shall any undertaking be required from or costs charged against the state controller or the State of California in any such proceeding.

§ 18. The orders, decrees and judgments fixing tax or determining that no tax is due, mentioned in this act, shall have the force and effect of judgments in civil actions. Except as otherwise herein provided, the provisions of the Code of Civil Procedure relative to judgments, new trials, appeals, attachments and execution of judgments, so far as applicable, shall govern all proceedings taken under this act. Nothing in this section shall preclude the state from relief herein provided for, which may be inconsistent with the provisions of the Code of Civil Procedure.

§ 19. The treasurer of each county shall collect all taxes and moneys that may be due and payable under this act and pay the same to the state treasurer (excepting such moneys as he may pay out from time to time pursuant to the provisions of this act) and the state treasurer shall give him a receipt therefor; of which collection and payment he shall make a report, under oath, to the controller, between the first and fifteenth days of May and December of each year, stating for what estate paid, and in such form and containing such particulars as the controller may prescribe; and for all such taxes collected by him and not paid to the state treasurer by the first day of June and January of each year he shall pay interest at the rate of ten per centum per annum.

§ 20. The treasurer of each county shall be allowed to retain, on all taxes paid and accounted for by him each year under this act, in addition to his salary or fees now allowed by law, three per centum of the first fifty thousand dollars so paid and accounted for by him, one and one-half per centum on the next fifty thousand dollars so paid and accounted for by him, and one-half of one per centum on all additional sums so paid and accounted for by him; *provided*, that no county treasurer shall be entitled to retain to his own use more than the sum of two hundred dollars out of the inheritance taxes paid on account of any transfer or transfers made by, or resulting from the death of, any one decedent, nor more than five thousand dollars out of the total inheritance taxes accounted for in any one year.

§ 21. The state controller, whenever he shall be cited as a party in any proceeding or action to determine any tax under this act provided, or whenever he shall deem it necessary for the better enforcement of this act to make any special employment to secure evidence of evasion of said tax, or to commence or appear in any proceeding or action to determine any tax hereunder, may, by and with the consent and approval of the attorney-general, make such special employment or designate and employ counsel or attorney in or out of this state to represent him on behalf of the state, and, by and with such consent of the attorney-general, he is hereby authorized to incur the necessary expense for such employment and any reasonable and necessary expense incident thereto. And the county treasurer is hereby authorized and directed to pay out of any funds which may be in his hands on account of this tax, on presentation of a sworn itemized account and on certificate of the state controller and attorney-general, all expenses incurred as in this section above provided, but no expense for such special employment or legal services up to and including the entry of the order of the court fixing the tax and the same becoming final, shall exceed ten per centum of the

tax and penalties collected; *provided*, that all reasonable and necessary expenses incurred, in any legal action or proceeding in any court of this state or on any appeal therefrom, other than attorney's fees, including expense of serving processes and printing and preparing of necessary legal papers, may be allowed and paid in the manner above provided, even though no tax be recovered in such action or proceeding, and the limitations herein made shall not apply thereto.

§ 22. All taxes levied and collected under this act, up to the amount of two hundred fifty thousand dollars annually, shall be paid into the treasury of the state, for the uses of the state school fund, and all taxes levied and collected in excess of two hundred fifty thousand dollars annually shall be paid into the state treasury to the credit of the general fund thereof.

§ 23. Every officer who fails or refuses to perform, within a reasonable time, any and every duty required by the provisions of this act, or who fails or refuses to make and deliver within a reasonable time any statement or record required by this act, shall forfeit to the State of California the sum of one thousand dollars, to be recovered in an action brought by the attorney general in the name of the people of the state on the relation of the controller.

§ 24. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

§ 25. An act entitled "An act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers to provide for its collection and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and by any act hereby repealed and for suits to quiet title against claims of liens arising hereunder or under an act hereby repealed to be known as the 'inheritance tax act'; to repeal an act entitled 'An act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and for suits to quiet title against claims of liens arising hereunder'; to repeal an act entitled 'An act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers; to provide for its collection and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and for suits to quiet title against claims of liens arising hereunder'; to repeal an act entitled 'An act to establish a tax on collateral inheritances, bequests and devises, to provide for the collection and to direct the disposition of its proceeds,' approved March 23, 1893, and all amendments thereto and to repeal all acts and parts of acts in conflict with this act, approved March 20, 1905, and all amendments thereto, and all acts and parts of acts in conflict with this act,' approved April 7 1911"; approved June 16 1913, and all amendments thereto, and all acts and parts of acts in conflict with this act are hereby expressly repealed; *provided, however*, that such repeal shall in nowise affect any suit, prosecution or proceeding pending at the time this act shall take effect, or any right which the State of California may have at the time of the taking effect of this act, to claim a tax upon any property under the provisions of the act or acts hereby repealed, for which no proceeding has been commenced, and where no proceeding has been commenced to collect any tax arising under any act hereby repealed the procedure to collect such tax shall conform to the provisions hereof; nor shall such repeal affect any appeal, right of appeal in any suit pending, or orders fixing tax, existing in this state at the time of the taking effect of this act.

Prior Statutes: L. 1893, ch. 168; L. 1895, ch. 28; L. 1897, ch. 83; L. 1899, ch. 85; L. 1903, ch. 152 and ch. 228; L. 1905, chapters 85, 314, 325; L. 1909, ch. 337; L. 1911, chapters 394 and 395; L. 1913, ch. 595; L. 1915, chapters 189 and 198.

COLORADO

Taxes all property of nonresidents within the state.

TABLE OF GRADED RATES

CLASS OR RELATIONSHIP	Exemption	Application of rates to value of inheritance				
		Excess of exemption to \$100,000	\$100,000 to \$200,000	All in excess of \$200,000		
		2%	3%	4%		
Father, mother, husband, wife, child, brother, sister, wife or widow of son, daughter's husband, adopted or mutually acknowledged child or lawfully born lineal descendant.	\$10,000	Up to \$10,000	\$10,000 to \$20,000	\$20,000 to \$50,000	\$50,000 to \$100,000	All over \$100,000
Uncle, aunt, niece or nephew or lineal descendant of same.	\$500	3%	3%	4%	5%	6%
All others except charities exempted by section 4.	\$500	4%	5%	6%	8%	10%

CHAPTER 136, L. 1913, BECAME A LAW MAY 14, 1913.

Section 1. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise, to any person or persons, institution or corporation except as hereinafter exempted, in the following cases:

(a) When the transfer is by will or by intestate laws of this state, from any person dying seized or possessed of any such property while a resident of the state.

(b) When the transfer is by will or intestate laws of property within the state and the decedent was a non-resident of the state at the time of his death.

(c) When the transfer is made by a resident, or by a non-resident when such non-resident's property is within this state, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor or intended to take effect in possession or enjoyment at or after such death; *provided* that any such gift, or any such deed, grant, bargain or sale without full and reasonable consideration and value made within one year from the date of the death of the grantor shall be deemed and held to have been made in contemplation of the death of the grantor.

(d) When any person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or the income therefrom, by any such transfer, whether made before or after the passage of this act.

(e) Whenever any person, institution or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made, shall be deemed a taxable transfer under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person, institution, or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise power, taking effect at the time of such omission or failure.

NOTE.—The rest of this section fixes the rates of tax and exemptions as shown in the foregoing table.

§ 2. Provides for the computation of the value of life estate and remainders upon mortality tables on basis of 5 per cent and for the immediate payment

of the tax on remainders unless the beneficiary elects to file a bond for its payment when the remainder falls in. In that case a verified inventory must be filed with the county judge along with the bond within a year after death and the bond must be renewed every five years.

§ 3. Provides for the immediate taxation of contingent remainders at highest possible rate against trustees and that when remainders upon which the tax has been suspended shall fall in they shall be taxed at the "full undiminished value" following the New York statute. It provides further that:

"Where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting."

§ 4. The following transfers of property shall be exempt from the inheritance tax, to wit: All transfers of property to the State of Colorado, or to any county, city, town or any other municipality, or for the use of public libraries for religious or charitable purposes exclusively, or for schools and colleges not for profit; *provided, however*, that the same be situated within this state, or the property be limited for use within this state.

§ 5. All taxes imposed by this act, shall be due and payable at the death of the decedent, except as hereinafter provided. If such tax is paid within six months from the accruing thereof, a discount of five per cent shall be allowed and deducted therefrom. If such tax is not paid within one year from the accruing thereof, interest shall be charged and collected thereon at the rate of ten per cent per annum from the time the tax accrued; and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent, they shall upon petition of the attorney-general to the county court, be required to give a bond in the form and to the effect prescribed in section 2 of this act, for the payment of said tax, together with interest.

§ 6. Requires executors or administrators to deduct the tax from money legacies or shares, to collect the tax from beneficiary of any specific legacy of property before delivery, makes the tax a lien on real estate and provides for its sale. In case of legacy of property for a limited period he shall make an application to the court if necessary to apportion the tax among the beneficiaries.

§ 7. Makes executors and administrators personally liable for the tax and gives power of sale in the same manner as to pay debts.

§ 8. Requires payment of tax to state treasurer who gives a voucher which must be produced before an executor or administrator is entitled to a final accounting.

§ 9. Provides that no tax shall be paid except upon an assessment order from the proper county court and for fees of the court clerk for entering the order.

§ 10. Requires executors and administrators to file with the attorney-general, within three months of appointment, a sworn statement of all property of the deceased, a false statement being perjury.

§ 11. Provides for proportionate refund of tax on legacies where debts have been proved after distribution if the tax has not been paid into the state treasury.

§ 12. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations of any domestic or foreign corporation doing business within this state, standing in the name of, or in trust for, a decedent, resident or non-resident, not exempt from taxation under section one hereof the tax shall be paid to the state treasurer on the transfer thereof. No corporation or other institution, person or persons, holding, or controlling the transfer of securities or assets of a decedent, resident or non-resident, nor any corporation in which such decedent held stock at the time of his decease, shall deliver or transfer the same to the executors, administrators, trustees, heirs or legatees of said decedent, or upon their order or request unless notice in writing of the time and place of such intended transfer or delivery be served upon the appraiser appointed under this act at least ten days prior to such transfer or delivery; nor shall any corporation, institution, person or persons, transfer or deliver any securities or assets of the estate of a non-resident decedent without

first obtaining the written consent thereto of the attorney-general who shall as a condition of such consent, require that a sufficient amount or portion of such security or assets be retained to pay any tax, and the interest thereon, which may thereafter be assessed upon the transfer of such property under the provisions of this act or any amendment thereof. And it shall be lawful for the said appraiser or attorney-general to examine said securities or assets at the time of such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax and interest as herein provided, shall render such corporation or other institution, person or persons, liable to the payment of the tax and interest due upon the transfer of said securities or assets, in pursuance of the provisions of this act, and in addition thereto, or in the absence of any tax, to a penalty of one thousand dollars. The payment of such tax and interest and penalty, or either, may be enforced against the corporation, institution or person in the same way as the liability of legatees, or legal representatives, or may be collected by a civil action by the attorney-general brought in any court of competent jurisdiction. The terms "corporation" and "institution" are defined to include corporations generally, foreign or domestic, which are qualified to do business in this state, and also all banks, trust companies, safe deposit companies or other corporate or non-corporate institutions occupying fiduciary relations. The term "securities or assets" shall include stocks, bonds, notes, securities, choses in action, and other personal property or the evidence thereof; and as applied to banks or similar organizations or persons, shall include deposits or other funds or papers held in storage, deposit or trust; and as to safe deposit companies, the contents or control of safe deposit boxes, and as to corporations of institutions generally shall include shares in, or registered bonds of, or other interests, in the corporation or institution transferring. Assets or securities, including safe deposit boxes, shall be considered the property of the decedent if held by him jointly with one or more other persons, or in any other qualified or limited sense, so long as the ownership possesses a pecuniary or proprietary value.

A fee of ten dollars shall be charged and collected for each such examination, whether such transfer be found to be taxable or not, provided that only one such fee shall be charged against any estate. Said fee shall be paid into the inheritance tax fund.

§ 13. Provides for the appointment of an inheritance tax appraiser and two deputies to appraise estates upon due notice; for an appeal to the county court and rehearing and for a further appeal to the district court upon filing a bond to pay costs if the appeal be taken by the estate. If no letters have been issued within sixty days from death the attorney-general may apply for them.

§ 14. If satisfied that an estate is not liable to tax the appraiser may make a certificate to that effect which is binding on the state except as to after discovered property.

§ 15. If the appraiser fails to act within a year the executor or administrator who has duly filed his sworn statement of assets may move on due notice to the attorney-general and the appraiser to have the county court appraise the estate or declare it exempt.

§ 16. Provides a penalty for the acceptance of a fee by appraiser or his deputy.

§ 17. Gives jurisdiction in tax proceedings to the county court having probate jurisdiction.

§§ 18 and 19. Provide for proceedings by the attorney-general to collect delinquent taxes.

§ 20. Provides for quarterly reports by county judge and county clerk of estates liable to tax.

§ 21. Requires the secretary of state to furnish the county courts with books for the keeping of transfer tax records.

§ 22. Requires the state treasurer to furnish copy of receipts of transfer taxes on payment of a fee of fifty cents.

§ 23. Authorizes the attorney-general to file a caveat in any proceeding pending for the settlement of an estate where he thinks a transfer tax may

be due in which case no decree can be entered unless the tax receipt is produced.

§ 24. Provides for the appointment of a special guardian for an infant in transfer tax proceedings.

§ 25. Provides that the attorney-general and state treasurer may compromise uncertain and unliquidated tax claims.

§ 26. The attorney-general with the approval of the governor, state treasurer and auditors may expend not to exceed \$2,000 a year for information from persons outside the state regarding transfers taxable under Colorado statute.

§ 27. All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that this act shall not operate to release or waive or otherwise alter any tax or taxes which may be approved under the provisions of any prior act.

§ 28. The general assembly hereby declares this law is necessary for the immediate preservation of the public safety.

§ 29. In the opinion of the general assembly an emergency exists, therefore this act shall be in full force and effect from and after its passage.

Prior statutes: L. 1901, ch. 94; L. 1902, ch. 3; L. 1907, ch. 214; L. 1909, ch. 193.

CONNECTICUT

Taxes real estate and tangible property within the state of nonresidents with distributive shares and exemptions proportioned to the entire estate.

TABLE OF GRADED RATES AS TO RESIDENT

CLASS OR RELATIONSHIP	Exemption, only one allowed to each class	In excess of exemption up to \$25,000	\$25,000 to \$50,000	\$50,000 to \$250,000	\$250,000 to \$1,000,000	In excess of \$1,000,000
CLASS A Parent, grandparent, husband, wife, lineal descendant, adopted child, adoptive parent, and lineal descendant of adopted child.	\$10,000	1%	1%	2%	3%	4%
CLASS B Husband or wife or a child, any step-child, brother or sister of the half or ull blood and the descendants of such brother or sister.	\$3,000	3%	5%	6%	7%	8%
CLASS C All others..... Except charitable exemptions prescribed by section 3.	\$500	5%	5%	6%	7%	8%

NOTE.—As to non-residents, vide section 7.

CHAPTER 332, L. 1915, BECAME A LAW MAY 19, 1915.

(As amended by chap. 356, L. 1917.)

SECTION 1. The words "choses in action," as used in this act, shall include deposits in banks, bonds, notes, credits and evidence of debt but shall not include shares of stock of any corporation.

§ 2. An inventory of all the property of every deceased person and insolvent debtor except real estate situate outside the state of Connecticut duly appraised, shall be made and sworn to by the executor, administrator or trustees and by him filed in the probate court having jurisdiction of the estate of such deceased person or insolvent debtor within two months after the acceptance of the bond or other qualification of such fiduciary provided

the inventory and appraisal of the estate of any non-resident decedent shall include only such interest as such decedent had at the time of his death in real estate and tangible personal property situated in this state. Such court may, for cause shown, extend the time of filing such inventory to not exceeding four months from the qualification of the fiduciary. Such inventoried property shall be appraised at its fair market value by two or more disinterested persons under oath, appointed by such court. Whenever the estate of any deceased person consists only of cash on hand or on deposit in banks, or both, no appraisal thereof need be made and the fiduciary shall enter in the inventory the amount of such cash and such deposits as the value thereof. If any fiduciary shall fail to file in such court an inventory and appraisal as hereinbefore required within the time limited as aforesaid, such court may cite such fiduciary to appear at a time and place therein stated and show cause why he should not be removed, and unless sufficient cause be shown and an inventory and appraisal be forthwith filed, such court shall remove such fiduciary and appoint a successor to complete the administration of such estate. If the estate of any deceased person be appraised for more than five hundred dollars the court of probate shall, within ten days after the filing in such court of such inventory or appraisal, cause a certified copy of the same, with the address of the fiduciary endorsed thereon, to be delivered to the tax commissioner. Within sixty days after the receipt of such copy by the tax commissioner, he or any party interested may file in such court a statement in writing setting forth in detail such objections as he may have to the acceptance of such inventory or appraisal and at the same time shall send a copy thereof to the executor or administrator, and if such objection be filed by the executor, administrator or an interested party, a copy shall be at the same time sent to the tax commissioner by the person filing such objection. Upon the filing of such objection, such court shall order a hearing on the acceptance of such inventory and appraisal to be had within sixty days and not less than fifteen days thereafter, and cause notice of the time and place of such hearing to be forthwith given to the tax commissioner and the executor or administrator of the estate. Such court upon such hearing shall hear such objections and determine the fair market value of any inventoried property, the appraised value of which has been objected to, and may order such executor, administrator or trustee to amend such inventory or appraisal in any way that it shall find proper, and may accept the same as amended. If no objection to such inventory or appraisal be filed as aforesaid, such inventory and appraisal may thereupon be accepted by such court. Such court may tax the costs incident to the proceedings on the filing of such objections, whether the same be heard or withdrawn, in favor of the prevailing party. The court of probate shall, within ten days after the filing of the inventory of any estate of the appraised value of more than ten hundred dollars, file with the tax commissioner a certified copy of the application for administration or probate of the will of such decedent, with a certified copy of the will. If, in the opinion of the judge of said court, any estate is not subject to succession or inheritance tax, he shall send to the tax commissioner with the copy of the inventory, a certificate to that effect, setting forth his reasons therefor, and unless the tax commissioner shall, within sixty days after the filing of such certificate, as hereinbefore provided, file an objection to such certificate, no tax shall be due from the estate inventoried as aforesaid, unless the appraised value of any item of the inventory be increased or additional property be thereafter discovered. The court of probate may, at any time, correct an error or mistake in such certificate. The value of the estate as set forth in the accepted inventory of an estate shall be the basis for computing the succession or inheritance tax. [As amended by ch. 356, L. 1917.]

§ 3. All property owned by any resident of this state at the time of his decease, and all real estate and tangible personal estate, not including stocks, bonds and choses in action within this state owned by a non-resident at the time of his decease, which shall pass by will or by the provisions of the general statutes relating to the distribution of intestate estates, and all such property of any decedent which shall pass by deed, grant or gift, made in contemplation of the death of the grantor or donor, or intended to take effect in

possession or enjoyment at the death of such grantor or donor, shall be liable to a tax as hereinafter provided. All property passing to or in trust for the benefit of any corporation or institution located in this state which receives state aid, or for the use of a municipal corporation for public purposes within this state, and all gifts of paintings, picture books, engravings, bronzes, curios, bric-a-brac arms and armor, and collections of articles of public interest, passing to any corporation or institution located in this state for preservation and free exhibition, shall be exempt from such tax. The provisions of this section shall not apply to real estate situated without the state of Connecticut. [As amended by chap. 356, L. 1917.]

§ 4. Provides that the court of probate shall have jurisdiction in transfer tax matters.

§ 5. The net estate for taxation purposes shall be ascertained by adding to the appraised value of the inventoried estate all gains made in reducing choses in action to possession, except income accruing after death, and deducting therefrom the amount of claims paid, all funeral expenses and expenses of administration, allowance made for the support of widow and family of the decedent during the settlement of the estate, the amount at death of all unpaid mortgages not deducted in the appraisal of property mortgaged, and losses incurred during the settlement of the estate in the reduction of choses in action to possession, provided no such deduction shall be made for allowance for support of widow and family beyond the date upon which the tax hereby imposed becomes payable.

§ 6. Prescribes the graded rates and exemptions given in the foregoing table.

§ 7. When any real estate or tangible personal property in this state of any non-resident shall pass by such gift, devise, bequest, or under the provisions of the general statutes relating to distribution of intestate estates, the court of probate having jurisdiction thereof shall ascertain the proportion of the estate of such nonresident decedent, wherever situated, passing to each of such three classes, and shall compute such tax as if the real estate or tangible personal property on which such tax is based passed to the classes referred to in the same proportion, but only such percentage of the exemptions provided for in section six shall apply as the estate of such non-resident in this state is of the entire estate.

§ 8. Provides that where there is a life estate annuity or limited term with remainder over that the tax shall be assessed as of the class to which the life tenant belongs and paid on that basis. When the remainder falls in if the remainderman is in a class taxed at a higher rate he must pay the excess, if at a lower rate the state refunds the excess without interest. The remainderman is not charged interest when he pays the excess within two months. The probate judge having jurisdiction must certify to the state treasurer within ten days when the termination of any life estate comes to his knowledge.

§ 9. Each administrator, executor or trustee shall, and the tax commissioner or any person interested may apply to such court to ascertain the amount of the tax upon any gift, devise, bequest or inheritance and such court shall prepare a proposed decree stating the amount of such estate as appraised, the gains, the deductions, the name and relationship to the decedent of each beneficiary, donee, grantee, heir or distributee the value of the taxable state passing to each class of beneficiaries, the amount of each exemption and the reason therefor, and the amount of tax payable by each beneficiary, and the rate and amount of the tax on the estate passing to each class, and shall assign a time and place for hearing such application not less than two nor more than four weeks after such assignment and shall cause a copy of such proposed decree and the order of hearing thereon to be sent to the tax commissioner and a like copy thereof to the administrator, executor or trustee of such estate at least two weeks before the time of such hearing. Such court may cause notice of the time and place of such hearing to be given to other persons interested in such manner as it shall direct. The tax commissioner or any person interested may appear before such court at such hearing and be heard concerning such decree. Such

court shall determine the amount of such tax and shall enter a decree for such amount in the form of such proposed decree. If there shall be no appearance on behalf of the tax commissioner, and it shall appear to the court that such proposed decree ought to be modified, such hearing shall be adjourned for not less than ten days and notice of the time and place of such adjourned hearing and of the changes to be made in such proposed decree shall be given to the tax commissioner, who may appear and be heard thereon. At such adjourned hearing the court may enter a final decree determining the amount of such tax, which shall be conclusive upon the state and persons interested unless appeal shall be taken as provided for appeals from other decrees and orders of such court. Such court shall issue a certificate to the state treasurer of the amount of such tax. In all cases where such court modifies the proposed decree the judge of such court shall cause a copy of the final decree to be forwarded to the tax commissioner. [As amended ch. 356, L. 1917.]

§ 10. Such tax shall be paid to the state treasurer within fourteen months after the death of the donor, grantor, testator or intestate, by the administrator, executor or trustee, provided the court of probate may, after hearing, on the application of the administrator, executor or trustee, made and filed with such court at or before the expiration of said fourteen months, extend the time for the payment of such tax or any part thereof; such application shall set forth the extension desired and the reason therefor, and a copy of the same shall be mailed to the tax commissioner at least six days before the date of such hearing; such court, after such hearing, shall forthwith send to the tax commissioner a copy of any order extending the time for the payment of such tax or any part thereof. Except as otherwise provided by this act or by the provisions of a will, such tax shall be paid from the property passing to the donee, beneficiary or distributee, unless such recipient shall pay to the executor, administrator or trustee the amount thereof. Only one exemption as herein provided shall be allowed to each class, and each beneficiary or distributee of the same class shall pay such percentage of the tax on property passing to such class as his share is of such property. The tax to be paid by a life tenant or limited term or annuitant shall be such percentage of the whole tax on property passing to persons of the same class as the portion of the principal of the estate which such tenant for life, or limited term or annuitant has the use of is of the net taxable estate passing to such class. Any executor, administrator or trustee may sell, in such manner as the court of probate shall order, such portion of any property passing to any beneficiary or distributee as may be necessary to pay such tax and the expense of sale, unless such beneficiary or trustee shall pay the amount of such tax to the administrator, executor or trustee. [As amended by chap. 356, L. 1917.]

§ 11. Fixes the rate of interest on unpaid taxes at nine per cent from date when due. Receipt of state treasurer must be produced before any final accounting allowed. Where the computation of the tax is extended or postponed the tax commissioner with the approval of the attorney-general may compromise the amount of the tax with the estate, and payment of the sum agreed satisfies the tax.

§ 12. All gifts of real or personal estate by deed, grant, or other conveyance made in contemplation of death, or to take effect in possession or enjoyment upon the death of the grantor or donor, shall be testamentary gifts within the meaning of this act, for taxation purposes, and all property conveyed to so take effect shall be subject to the tax imposed by the provisions of this act. Executors and administrators shall forthwith inventory such property, and the computation of such tax shall be made as herein provided. No executor, administrator, trustee, or bailee, having possession of property so conveyed or given, or of any deed, grant, conveyance or other evidence of such transfer, gift, or alienation of property so conveyed or given, shall deliver the same until such property has been inventoried and appraised, and such inventory and appraisal accepted by the court. If no person interested shall apply for letters of administration within thirty days after the death of any intestate, the tax commissioner may apply to the court for the appointment of an administrator, and after notice and hearing such court may appoint an administrator.

§ 13. Whenever any person shall exercise a power of appointment created by a will hereafter admitted to probate, or shall by will exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made, shall be deemed to be a disposition of property by the person exercising the power taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed and devised by the donee by will; and whenever any person possessing such power of appointment shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a disposition of property taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure in the same manner as though the persons and corporations thereby becoming entitled to the possession or enjoyment of property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise the same, taking effect at the time of such omission or failure.

§ 14. Provides for the filing of exemplified copies of a will found in another state conveying property situated in this state.

§ 15. Chapter 152 of the public acts of 1905 and chapter 73 of the public acts of 1913 are hereby repealed.

§ 16. This act shall take effect from its passage and shall apply to estates of all persons whose death occurs thereafter and to estates vesting by the exercise of any power of appointment or upon the death of any grantor or donor occurring subsequent to the passage of this act.

Prior Statutes: L. 1889, ch. 180; L. 1893, ch. 257; L. 1897, ch. 201; L. 1901, ch. 123; L. 1903, ch. 63; L. 1905, ch. 256; L. 1907, ch. 179; L. 1909, ch. 218; L. 1911, ch. 204; L. 1913, ch. 231.

DELAWARE.

New statute, approved March 24, 1917, taxes all property of non-residents within the state except stock in Delaware corporations.

From March 26, 1909, to March 24, 1917, taxed all property of non-residents within the state on transfers to collaterals and strangers only.

TABLE OF RATES AND EXEMPTIONS SUBSEQUENT TO MARCH 24, 1917

CLASS OR RELATIONSHIP	Exemption	RATES OF TAX			
		Above exemption to \$30,000	\$30,000 to \$100,000	\$100,000 to \$200,000	In excess of \$200,000
Parent, grandparent, husband, wife, child by birth or legal adoption, daughter-in-law, son-in-law, lineal descendant.	\$3,000	1%	2%	3%	4%
Brother or sister, either of the whole or half blood of descendants, of descendant's parent or grandparent, or any lineal descendant of the same.	\$1,000	Above exemption to \$25,000	\$25,000 to \$100,000		
		2%	3%	4%	5%
All others, except charitable, educational, historical or religious societies, or institutions, cities or towns for public improvement, school districts or library commissions.	.....	On all up to \$25,000	\$25,000 to \$100,000		
		5%	6%	7%	8%

The present act approved March 24, 1917.

The amendment of 1917 after changing the title of the prior statute from "Collateral Inheritance Tax" to "Inheritance Tax," provides:

146. § 109. Property subject to; rates; exemptions. All property within the jurisdiction of this state, real and personal, and every estate and interest therein, whether belonging to residents or non-residents of this state, (except shares of the capital stock of corporations created under the laws of this state when owned by persons without this state) which passes by will, or by the intestate laws of this state, or by deed, grant, gift, or settlement (except in cases of a bona fide purchase for full consideration in money or money's worth) made in contemplation of, or intended to take effect in possession or enjoyment after, the death of the grantor, donor, or settlor, to any person, or persons, bodies politic, or corporate, in trust or otherwise, shall be subject to taxation as follows:

The act then fixes the rates and exemptions as shown in the foregoing table.

The statute then provides as follows:

"Any transfer of a material part of the property of a decedent in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without full consideration in money or money's worth, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this chapter.

§ 2. That said chapter 6 be and the same is hereby further amended by repealing "152, Sec. 115" thereof, and inserting in lieu thereof the following new "152, Sec. 115":

152. § 115. Register of wills; returns by of tax collected, to state treasurer; accounting by; commissions of; liability upon bond of; removal from office, when: It shall be the duty of the several registers of wills in the state, to make return, under oath to the state treasurer, on the first days of January, April, July and October, in each year, or within thirty days thereafter, of all sums of money received by them as taxes under the provisions of said sections 109 to 115 inclusive, of this chapter, and to pay over to said state treasurer the amounts so by them received respectively, at the time of making such returns, and if any register of wills shall fail to pay over, as required by this section, the state treasurer shall give notice to the attorney general of the state, whose duty it shall be to institute suit on the official bond of such register of wills, for the use of the state, to recover the amount due from such register of wills, and in such suit the amount appearing to be due, with interest thereon, and costs, shall be recovered, which recovery shall be evidence of misbehavior in office, and upon conviction thereof such register of wills shall be removed from office.

THE PRIOR STATUTE

TABLE OF RATES AND EXEMPTIONS FROM MARCH 26, 1909, TO MARCH 24, 1917

CLASS OR RELATIONSHIP	Exemption	Rate of tax
Father, mother, grandfather, grandmother, wife, husband, child by birth or legal adoption or lineal descendants.	All	No tax.
Brother, sister or their descendants	500	1% on all in excess of exemption.
Brother or sister, either of the whole or half blood of the decedent's parents or their descendants.	500	2% on all in excess of exemption.
Brother or sister either of the whole or half blood of the decedent's grandparents or their descendants.	500	3% on all in excess of exemption.
All others except charitable corporations specified in section 1.	500	5% on all in excess of exemption.

**LAWS OF 1909, CHAPTER 225, AS AMENDED BY L. 1913, BECAME A
LAW MARCH 26, 1909.**

Section 1. All property within the jurisdiction of this state, real and personal, and every estate and interest therein, whether belonging to inhabitants of this state or not, which shall, after the approval of this act, pass by will, or by the intestate laws of this state, or by deed, grant or gift (except in cases of a *bona fide* purchase for full consideration in money or money's worth, made or intended to take effect in possession or enjoyment after the death of the grantor or donor, to any person or persons, bodies politic or corporate, in trust or otherwise,

NOTE.—The section then fixes the rates and exemptions as shown in the above table.

The section concludes: provided further that nothing in this act shall be construed to impose any tax upon any property, estate or interest therein passing to or for the use, or in trust for, charitable, educational or religious societies or institutions, or cities or towns for public improvement, or to school districts or library commissions.

§ 2. Requires the executor or administrator to pay the tax before he pays any pecuniary legacy or distributive share within thirteen months and in case of failure shall not be allowed any commissions and makes him liable on his official bond.

§ 3. The estate or interest of every person, body politic or corporate, in all real and personal property, taxable under the provisions of section 1 of this act, whether in remainder, reversion or otherwise, or in trust or otherwise, or conditioned upon the happening of a contingency or dependent upon the exercise of a discretion, or subject to a power of appointment, or otherwise, and all annuities taxable as aforesaid, shall be valued by the register of wills for the purpose of determining the amount of tax to be collected from such person, body politic, or corporate, under the provisions of this act. Where the property shall pass in trust or otherwise to one or more persons, bodies politic or corporate, for a term of years or greater estate or interest, and with remainder or reversion to one or more other persons, bodies politic, or corporate, the estate or interest of each beneficiary shall be valued separately. The register of wills referred to in this section shall be the register of wills of the county where letters testamentary or of administration have been granted on the estate of the donor, grantor, deviser or intestate from whom the property aforesaid shall have passed as set forth in section 1 of this act, but in no such letters have been granted then the said register shall be the register of wills of the county in which such property is, or is situated. Such valuation shall be made within thirteen months of the death of the donor, grantor, deviser or intestate aforesaid. The register shall give one week's notice to the parties in interest by posting the same in his office or in some other manner as he shall deem proper, of the time when he will hear any of said parties relative to such valuation. The said register shall have power to summon witnesses and take testimony relative to the valuation aforesaid.

The section further provides for an appeal from the appraisal to the orphan's court the decision of which is final. It makes the tax a lien on real estate and provides for the collection of the tax by an executor or administrator from a specific legatee or heir to distributive share of specific property. In failure of the beneficiary to pay within thirty days application to the orphan's court is required for an order of sale. Where the legacy is made a charge on land the holder of the land must pay the tax to the executor. Trustees must pay the tax out of the trust property to the executor or if none named to the register of wills of the proper county. The executor or administrator must file, within two months of appointment, with the register of wills a sworn statement of all real estate of the decedent. The register of wills must keep a docket of such statements and note therein the assessment and payment of the tax. The state treasurer must examine this docket and notify the attorney general of delinquents who must proceed to collect the tax. If no executor or administrator appointed a party liable may pay tax to register of wills.

§ 4. Makes the bond of an executor or administrator liable for taxes.

§ 5. Every executor or administrator collecting the tax aforesaid by sale of any estate or interest as aforesaid, shall pay the tax so collected to the register of wills of the proper county.

§ 6. Every register of wills receiving any tax under the provisions of this act, shall give the person paying the same, duplicate receipts therefor, one of which shall be forwarded by the person so paying as aforesaid, to the state treasurer to be by him preserved, and either of said duplicate receipts shall be evidence in suits upon the bond of said register to recover the taxes so by him received.

§ 7. Requires the register of wills to make quarterly tax returns to the state treasurer and makes their bondsmen liable in default.

Prior Statutes: L. 1869, ch. 390; L. 1871, ch. 21; L. 1871, ch. 24; L. 1877, ch. 337; L. 1883, ch. 8; L. 1883, ch. 11. The last act was in force until March 26, 1909.

DISTRICT OF COLUMBIA.

Has no inheritance tax.

FLORIDA.

Has no inheritance tax.

GEORGIA.

Taxes property of non-residents within the state.

TABLE OF RATES

CLASS OR RELATIONSHIP	Amount of exemption	Rate of tax
Father, mother, husband, wife, child, brother, sister, wife or widow of a son, adopted child or lineal descendant if decedent.	\$5,000	1% on all in excess of exemption
All others.....	None	5%

LAWS 1913, NO. 259, BECAME A LAW AUGUST 19, 1913.

Section 1. Be it enacted by the general assembly of the state of Georgia, and it is hereby enacted by authority of the same, that from and after the passage of this act, all property within the jurisdiction of this state, real and personal, and every estate and interest therein, whether belonging to the inhabitants of this state or not, which shall pass on the death of a decedent by will or by the laws regulating descents and distributions, or by deed, grant, or gift, except in cases of a *bona fide* purchase for a full consideration made, or intended to take effect in possession or enjoyment, after the death of the grantor or donor, to any person or persons, bodies politic or corporate in trust or otherwise shall be subject to taxes and shall pay the following tax to this state:

§ 2. Be it further enacted, that if any section of this act or any part of any section of this act be hereafter declared invalid, the remainder of said act shall stand.

§ 3. Be it further enacted by the authority aforesaid, that the taxes imposed by this act shall be and remain a lien upon the property subject to said tax from the death of the decedent, and that all taxes imposed by this act unless otherwise herein provided for, shall be due and payable at the death of the decedent.

NOTE.—The rest of the section imposes the rates and exemptions of the foregoing table.

§ 4. Provides for the valuation and taxation of life estates and remainders upon mortality tables using the basis of 6%.

§ 5. Requires the executor or administrator to pay the tax out of the legacy or distributive share if in money, to withhold the property until the beneficiary pays it and to sell it in default after due notice in the same manner as for debts and makes them personally liable.

§ 6. Provides that where any legacy is a charge on real estate the devisee must deduct the tax before paying it.

§ 7. Requires the executor or administrator to file an inventory with the court of ordinary within three months of appointment under penalty of \$1,000 for neglect or refusal.

§ 8. Provides that if no will is offered or administration proceedings commenced within three months of death the comptroller-general of the state or tax collector of the county may apply for letters.

§ 9. Provides that if the heirs file satisfactory inventory and administration is not necessary it may be dispensed with but proceedings must be had upon the inventory as in all other cases.

§ 10. Be it further enacted by the authority aforesaid, that when property subject to this tax is transferred or limited in trust or otherwise, and the rights, interest or estates of the transferees or beneficiaries are dependent upon contingencies or conditions whereby each may be wholly or in part created, defeated, extended or abridged, the tax so imposed on such property shall be due and payable forthwith by the executor or trustee out of the property transferred; that where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting.

§ 11. Provides for the appointment of appraisers and their fees and appraisal on due notice to all parties in interest.

§ 12. Be it further enacted by the authority aforesaid, that immediately upon the filing of the report of the appraisement the ordinary shall calculate and determine the amount of tax due on such property under this act, and shall in writing certify such amount to the tax collector, to the executor, administrator or trustee and to the person to whom or for whose use, the property passes; and that for such calculation and for certifying said amount to the tax collector, the ordinary shall receive a fee of \$3.00, which shall be taxable as a part of the costs of administering said estate; that said tax shall be a lien upon such property from the death of the decedent until paid and shall bear interest from such death until paid, unless payment shall be made within twelve months after such death, in which case no interest shall be charged.

§ 13. Be it further enacted by the authority aforesaid, that all taxes received under this act by any executor, administrator or trustee, shall be paid by him within thirty days thereafter to the tax collector of the county whose court of ordinary has jurisdiction of the estate of the decedent; that upon such payment the tax collector shall make duplicate receipts thereof; that he shall deliver one to the party making payment, the other he shall send to the comptroller-general of the state, who shall charge the tax collector with the amount thereof, and shall countersign such receipt and transmit same to the party making payment.

§ 14. Be it further enacted by the authority aforesaid, that the tax collector of each county shall, on or before the 15th day of each month, pay to the comptroller-general all taxes received by him under this act before the first day of that month, deducting therefrom his fees which shall be the same as his fees on other tax monies received by him.

§ 15. Be it further enacted by the authority aforesaid, that no final account of an executor, administrator or trustee shall be allowed by the court of ordinary unless such account shows and the ordinary so finds, that all taxes imposed under this act on any property or interest passing through his hands as such have been paid; that the receipt of the tax collector for such taxes shall be proper voucher for such payment.

§ 16. Be it further enacted by the authority aforesaid, that when the taxes imposed by this act have not been paid within twelve months from the date of the filing of the amount of said tax by the ordinary in the office of the tax collector to whom said tax is payable, the said tax collector shall issue executions against the persons, and property liable for said tax and proceed in every way for the enforcement and payment of said tax in like manner that he may now proceed by execution, and for the enforcement and payment of direct taxes on property against delinquent tax payers.

§ 17. Be it further enacted by the authority aforesaid, that all laws and parts of laws in conflict herewith be, and the same are, hereby repealed.

Prior Statutes.—Note.—The foregoing in the first transfer tax statute enacted by the state of Georgia.

HAWAII.

Tax on all property of non-residents within the territory.

TABLES OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount exempt	Rate
Father, mother, husband, wife, child, grandchild, adopted child.	\$5,000	2% on all above exemptions.
Charitable, benevolent, educational or public purposes.	All	No tax.
All others.	\$500	5% on all above exemption.

LAWS 1909, CHAPTER 102, AS AMENDED BY CHAPTERS 66 AND 147, LAWS 1909, AND CHAPTER 130, LAWS 1911.

Section 1. All property which shall pass by will or by the intestate laws of this territory, from any person who may die seized or possessed of the same while a resident of this territory, or which being within this territory shall pass whether by the laws of this territory or otherwise, from any person who may die while not a resident of this territory, or which, or an interest in or income from which shall be transferred by deed, grant, sale, or gift made in contemplation of the death of the grantor, vendor, or bargainer or intended to take effect in possession or enjoyment after such death to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy to any property, or to the income thereof, shall be and is subject to a tax hereinafter provided 'or, to be paid to the treasurer of the territory of Hawaii as hereinafter directed, for the use of the territory; and such tax shall be and remain a lien upon the property passed or transferred until paid and all administrators, executors and trustees of every estate so transferred and the person to which the property passes or is transferred or passed shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. The tax so imposed shall be upon the market value of such property at the rates hereinafter prescribed and only upon the excess over the exceptions hereinafter granted.

Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omissions or failure in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of the omission or failure.

The rest of the section and section 2 prescribe the rates and exemptions of the foregoing table.

§ 3. Provides that remaindermen who elect not to pay the tax until they come into possession may file a bond and inventory within one year in twice the amount of the tax and renew the bond every five years.

§ 4. Taxes the excess over reasonable services of bequests to executors in lieu of commissions.

§ 5. Makes taxes due at death, no interest due until after 18 months when 10% charged from time of accrual allows a discount of 5% if paid within one year. After 18 months executor or administrator must give a bond if the tax is not paid.

§ 6. Provides that the penalty may be reduced to 7% from expiration of 18 months in case of unavoidable delay.

§ 7. Requires the executor or administrator to deduct the tax or collect it from the beneficiary to whom he may not deliver the property until the tax is paid.

§ 8. Gives power of sale to pay the tax as in case of debts.

§ 9. Provides for receipts which must be produced before any final accounting can be had.

§ 10. Provides for proportionate refund when debts are proved against the estate after distribution.

§ 11. Requires the payment of the tax by a foreign executor or administrator before transferring property and makes the usual regulations as to securities deposited with banks and trust companies which must notify the treasurer and permit an examination.

§ 12. Provides for appraisal of life estates and remainders to be valued on American Experience Tables on the 5% basis.

The remaining sections make the usual provisions as to procedure and the collection of delinquent taxes.

IDAHO.

Taxes all property of non-residents within the state.

TABLE OF RATES AND EXEMPTIONS

CLASSIFICATION OR INDICATION OF RELATIONSHIP	Property exemption	Application of rates to value of inheritance or bequests				
		On excess after deduction of exemp- tion from \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child.	Widow or minor child, \$10,000; Others, \$4,000.	1%	1½%	2%	2½%	3%
Brother, sister, or descendant of either, wife or widow of a son, husband of a daughter.	\$2,000	1½%	2½%	3%	3½%	4½%
Uncle, aunt, or descendant of either.	\$1,500	3%	4½%	6%	7½%	9%
Grand uncle, grand aunt, or descendant of either.	\$1,000	4%	6%	8%	10%	12%
Other degree of collateral consanguinity, stranger in blood, body politic or corporate, except charitable corporations, exempted by section 1877.	\$500	5%	7½%	10%	12½%	15%

LAWS OF 1907, CHAPTER 78, BECAME A LAW MARCH 16, 1907.

(Codified Idaho Revised Codes [1908] Title 10, Ch. 5.)

§ 1873. All property which shall pass, by will or by the intestate laws of this state, from any person who may die seized or possessed of the same while a resident of this state, or if such decedent was not a resident of this state at the time of death, which property or any part thereof, shall be within this state, or any interest therein, or income therefrom, which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor, vendor or bargainor, or intended to take effect in possession or enjoyment after such death, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or to the income thereof, shall be and is subject to a tax hereinafter provided for, to be paid to the treasurer of the proper county, as hereinafter directed for the benefit of the general fund of this state to be used for all the purposes for which said fund is available. And the county treasurer shall, upon receipt of said tax, pay the same to the state treasurer and take duplicate receipts thereof, one of which the county treasurer shall retain, and transmit the other to the state auditor and receive from him credit for the amount thereof on his account; and such tax shall be and remain a lien upon the property passed or transferred until paid, and the person to whom the property passes or is transferred, and all administrators, executors and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. The tax so imposed shall be upon the market value of such property at the rates hereinafter prescribed, and only upon the excess over the exemptions hereinafter granted.

§ 1874. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this chapter, such appointment when made shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this chapter shall be deemed to take place to the extent of such omission or failure, in the same manner as though the person or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

Sections 1875 and 1876 fix the rate of tax as given in the foregoing table.

§ 1877. The following exemptions from the tax are hereby allowed:

1. All property transferred to societies, corporations and institutions now or hereafter exempted by law from taxation or to any public corporations, or to any society, corporation, institution or association of persons engaged in or devoted to any charitable, benevolent, educational, public or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institution or association of persons in trust for or to be devoted to any charitable, benevolent, educational or public purpose, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof shall be exempt.

The rest of the section gives the exemptions as shown in the table.

NOTE: The rest of the statute is substantially a copy of that of California prior to 1917 and will therefore be briefly summarized.

§ 1878. Provides for the immediate appraisal of life estates and remainders. If the remainderman elect not to pay the tax until the remainder falls in he may file a bond in twice the amount of the tax.

§ 1879. A bequest to executor in lieu of commissions is taxed on the excess over reasonable compensation.

§ 1880. Taxes due at death. If paid within six months 5 per cent. discount allowed. No interest charged until after one year. After that 10 per cent., but if unavoidable delay court may extend time of payment and reduce interest to 6 per cent.

§ 1881. Provides for the collection of the tax by the executor or administrator from the beneficiary.

§ 1882. Gives power to sell chattels or real estate to pay tax.

§ 1883. Provides for payment of tax by executor or administrator to county treasurer and must produce receipt before entitled to final accounting.

§ 1884. Provides for refund of proportion of tax where debts are proved against estate after distribution.

§ 1885. Requires payment of tax by foreign executors and administrators before transferring property within the state and requires trust and safe deposit companies, banks, etc., to hold assets open to inspection and to retain enough to pay the tax before delivery to executor or administrator under a penalty of twice the tax.

§ 1886. Provides for the appointment of an appraiser, the appraisal, and the valuation of life estates and remainders actuaries combined tables on a basis of 5 per cent.

§ 1887. Forbids the appraiser to accept a bribe under penalty of fine and imprisonment.

§ 1888. Gives jurisdiction to the probate court in which the property is situated in case of non-residents.

§ 1889. The words "estate" and "property" as used in this chapter shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees or successors, and shall include all personal property within or without the state. The word "transfer" as used in this chapter shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment in the manner herein described. The word "decedent" as used in this chapter shall include the testator, intestate, grantor, bargainor, vendor or donor.

NOTE: The rest of the statute concerns the collection of delinquent taxes.

Prior Statutes.—None.

ILLINOIS.

Taxes all property of non-residents within the state.

TABLE OF GRADED RATES

CLASS OR RELATIONSHIP	Exemption	Rates of tax				
Father, mother, husband, wife, child, brother, sister, wife or widow of son, daughter's husband, adopted or mutually acknowledged child, or lawful lineal descendant of decedent.	\$20,000	Excess of exemption up to \$100,000, 1%		All in excess of \$100,000, 2%.		
Aunt, uncle, niece, nephew or lineal descendants of same.	\$2,000	Excess of exemption up to \$20,000, 2%.		All in excess of \$20,000 above exemption, 4%.		
		Up to \$10,000	\$10,000 to \$20,000	\$20,000 to \$50,000	\$50,000 to \$100,000	All in excess of \$100,000
All others, excepting charitable bequests exempted by section 23.	Less than \$500 not taxed.	3%	4%	5%	6%	10%

LAWS OF 1909 AS AMENDED BY L. 1913.

(*In force July 1, 1913, and L. 1917, in force May 7, 1917.*)

The 1913 and 1917 amendments did not affect the graded rates, exemptions or property of non-residents.

Section 1. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted in the following cases:

1. When the transfer is by will or by the intestate laws of this state from any person dying, seized or possessed of the property while a resident of the state.

2. When the transfer is by will or intestate laws of property within the state and the decedent was a non-resident of the state at the time of his death.

3. When the transfer is of property made by a resident, or by a non-resident when such non-resident's property is within this state, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. When any such person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or the income therefrom, by any such transfer, whether made before or after the passage of this act.

4. Whenever any person, institution or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made, shall be deemed a taxable transfer under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

The rest of the section fixes the rates and exemptions as shown in the foregoing tables.

§ 2. Provides for the valuation of life estates and remainders by mortality tables on a basis of 5 per cent. If the beneficiary elects not to pay the tax until the remainder falls in he may file a bond to pay tax and interest for three times the tax with an inventory within one year of death, bond to be renewed every five years.

§ 3. Makes taxes due at death, allows a discount of 5 per cent if paid within six months, fixes interest at 6 per cent and if tax not paid within one year executor or administrator must file a bond.

§ 4. Requires executors or administrators to deduct tax from money legacy or distributive share or to collect it from beneficiary if not money before delivering the property.

§ 5. Makes executors and administrators personally liable and gives them power of sale to collect the tax.

§ 6. Provides for payment within thirty days to proper county treasurer whose receipt must be produced before executor or administrator can have final accounting.

§ 7. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any person or persons, or in trust for them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof in writing to the treasurer of the county where said real estate is situated, within six months after they undertake the execution of their expected duties, or if the fact be not known to

them within that period, then within one month after the same shall have come to their knowledge.

§ 8. Whenever debts shall be proved against the estate of the decedent after distribution of legacies from which the inheritance tax has been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator if the said tax has not been paid into the state or county treasury, or by the county treasurer if it has been so paid.

§ 9. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent or in trust for a decedent, liable to any such tax the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or non-resident or belonging to or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the state treasurer and attorney-general at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the state treasurer and attorney-general consent thereto in writing. And it shall be lawful for the state treasurer, together with the attorney-general, personally or by representatives, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of one thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the state treasurer in any court of competent jurisdiction.

§ 10. When any amount of said tax shall have been paid erroneously to the state treasury, it shall be lawful for him on satisfactory proof rendered to him by said county treasurer of said erroneous payments to refund and pay to the executor, administrator or trustee, person or persons who have paid any such tax in error the amount of such tax so paid: *Provided*, that all applications for the repayment of said tax shall be made within two years from the date of said payment.

§ 11. It shall be the duty of the county judge to ascertain whether any transfer of any property be subject to an inheritance tax under the provisions of this act, and, if it be subject to such inheritance tax, to assess and fix

the then cash value of all estates, annuities and life estates or terms of years growing out of said estates and the tax to which the same is liable. The county judge, upon the application of any interested party, including the attorney-general, or upon his own motion as often as, or whenever occasion may require, may hear evidence and determine the fair cash value of such estate and the amount of inheritance tax to which the same is liable or the county judge may, in such case, in his discretion, where the facts are complicated and evidence is voluminous, appoint some competent person as appraiser to appraise the fair cash value at the time of the transfer thereof of the property of persons whose estates shall be subject to the payment of any inheritance tax imposed by this act. Whether the fair cash value of such estate shall be ascertained and determined by the appraiser appointed by the county judge or by the county judge, notice shall, in each case, be given by mail to all persons known to have a [or] claim an interest in such property, including the attorney-general, and to such persons as the county judge by order directs, of the time and place he will appraise such property.

The rest of the section provides for the appointment of appraisers in every case in the larger counties, for hearings on due notice before the appraisers and for an appeal from this report to the county judge closely following the New York practice.

§ 12. Prescribes the duties and fees of the county court clerk in transfer tax proceedings.

§ 13. Imposes a penalty if appraisers accept fee or reward.

§ 14. Gives the county court jurisdiction in transfer tax proceedings.

§§ 15-22. Provide for the collection of delinquent taxes, records and reports of the county judge, fees of the state treasurer who shall furnish copies of transfer tax receipts to all persons on payment of fee of fifty cents.

By a statute approved May 7, 1917, section 20, was amended to read as follows:

§ 20. The treasurer of each county shall collect all such taxes and on the first day of each and every month transmit all such taxes so collected prior thereto, and not yet transmitted, to the state treasurer, who shall give him a receipt therefor, of which collection and payment he shall make report under oath to the auditor of public accounts, on the first day of each and every month, stating for what estate paid, and in such form and containing such particulars, as the auditor may prescribe. *If any county treasurer shall fail to pay to the state treasurer all taxes that may be due and payable under this act, as prescribed herein, such county treasurer shall pay to the state, as a penalty for such failure a sum of money equal to the interest on such taxes at the rate of one-tenth of one per cent per day from the time such taxes are collected by said county treasurer until such taxes are paid. The sureties upon the official bond of such county treasurer shall be security for the payment of such penalty. The penalty in this section provided may be recovered in an action of debt against such county treasurer and his sureties aforesaid, in the name of the people of the state of Illinois, in any court of competent jurisdiction within the county wherein such county treasurer is resident; and such penalty, when recovered, shall be paid into the state treasury. Such action shall be brought by the state treasurer within ten days after the failure of such county treasurer to pay to the state treasurer any taxes collected by him, at the time required by this act. Failure to bring such suit within such time shall not prevent the bringing of such suit thereafter. And it is hereby made the duty of the state treasurer to make necessary and proper investigations to determine what inheritance tax should be paid.*

§ 23. When any person interested in any property in this state, which shall have been transferred within the meaning of this act shall deem the same not subject to any tax under this act, he may file his petition in the county court of the proper county to determine whether said property is subject to the tax herein provided, in which petition the county treasurer and all persons known to have or claim any interest in said property shall be made parties. The county court may hear the said cause upon the relation of the parties and the testimony of witnesses, and evidence produced in open court, and, if the court shall find said property is not subject to any tax, as herein provided, the

court shall, by order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases. An adjudication by the county court, as herein provided, shall be conclusive as to the lien of the tax herein provided upon said property, subject to appeal to the supreme court of the state by the county treasurer, or attorney-general of the state, in behalf of the people, or by any party having an interest in said property. The fees and costs in all cases arising under this section shall be the same as are now or may hereafter be allowed by law in cases at law in the county court.

§ 24. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied: *Provided*, that said lien shall be limited to the property chargeable therewith: *And, provided, further*, that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to be paid and cease to be a lien as against any purchaser of real estate.

§ 25. When property is transferred or limited in trust or otherwise, and the rights, interest or estates of the transferees or beneficiaries are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred: *Provided, however*, that on the happening of any contingency whereby the said property, or any part thereof is transferred to a person, corporation or institution exempt from taxation under the provisions of the inheritance tax laws of this state, or to any person, corporation or institution taxable at a rate less than the rate imposed and paid, such person, corporation or institution shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person, corporation or institution should pay under the inheritance tax laws, with interest thereon at the rate of three per centum per annum from the time of payment. Such return of over-payment shall be made in the manner provided for refunds under section eight.

Estates or interests in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for the purposes of taxation, upon which said estates or interests in expectancy may have been limited.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

§ 26. Provides that the state treasurer with consent of the attorney-general may compromise contingent and uncertain tax claims.

§ 27. If it appears at any stage of an inheritance tax proceeding that any person known to be interested therein is an infant or person under disability, the county judge may appoint a special guardian of such infant or person under disability.

§ 28. When the beneficial interests of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, bible, missionary, tract, scientific, benevolent or charitable purpose, or to any trustee, bishop or minister of any church or religious denomination, held and used exclusively for the religious, educational or charitable uses and purposes of such church or religious denomination, institution or corporation, by grant, gift, bequest or otherwise, the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members.

§ 29. When property, or any interest therein or income therefrom, shall pass to or for the use of any person institution or corporation by the death of another by deed, instrument or memoranda, such passing shall be deemed a

transfer within the meaning of this act, and taxable at the same rates, and be appraised in the same manner and subjected to the same duties and liabilities as any other form of transfer provided in this act.

§ 30. Provides for furnishing certified copies of papers by county court and county treasurers.

§ 31. Repeals former statutes with a saving clause as to taxes accruing thereunder.

Prior statutes: 1887, p. 183; 1891, p. 137; 1895, p. 301; 1901, p. 268.

INDIANA.

Taxes real estate and tangible property within the state of non-residents. Substantially copies the New York statute of 1911 except as to rates and exemptions.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount of exemption	Rates of tax				
		Above exemption up to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Husband, wife, lineal issue, lineal ancestor of decedent, adopted or mutually acknowledged child, or issue of same.	Widow, \$10,000, all others, \$2,000.	1%	1½%	2%	2½%	3%
Brother or sister or their descendants wife or widow of son, husband of daughter.	\$500	1½%	2½%	3%	3½%	4½%
Aunt, uncle or their descendants. . . .	\$250	3%	4½%	6%	7½%	9%
Brother or sister of grandparents or their descendants.	\$150	4%	6%	8%	10%	12%
All others, except charitable bequests, exempted by section 4.	\$100	5%	7½%	10%	12½%	15%

LAWS 1913, CHAPTER 47, BECAME A LAW FEBRUARY 28, 1913.

(As amended by Laws of 1917, which did not change rates or exemptions.)

Section 1. Be it enacted by the general assembly of the State of Indiana, that a tax shall be imposed upon any transfer of property, real, personal or mixed, or any interest therein or income therefrom in trust or otherwise to any person, association or corporation, except county, town or municipal corporations for strictly county, town, municipal purposes, or to the bishop, rector, pastor, trustee, board of trustees, or governing body of any educational or religious institution who shall use the property so transferred solely for religious, charitable, or educational purposes, within the state, and corporations of this state organized under its laws solely for religious, charitable or educational purposes, which shall use the property so transferred exclusively for the purposes of their organization within the state, in the following cases:

1. When the transfer is by will or by the intestate laws of this state of any intangible property, or of tangible property within the state, from any person dying seized or possessed thereof while a resident of the state.

2. When the transfer is by will or intestate law, of tangible property within the state, and the decedent was a non-resident of the state at the time of his death.

3. Whenever the property of a resident decedent, or the property of a non-resident decedent within this state transferred by will is not specifically

bequeathed or devised such property shall, for the purposes of this article, be deemed to be transferred proportionally to and divided *pro rata* among all the general legatees and devisees named in said decedent's will, including all transfers under a residuary clause of such will.

4. When the transfer is intangible property or of tangible property within the state, made by a resident, or of tangible property within the state made by a non-resident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor or intended to take effect in possession or enjoyment at or after such death.

NOTE.—By the amendment of 1917 the following was added to subd. 4: "Provided that any conveyance, gift or transfer made within two years of the death of any decedent, without consideration, save except love and affection, shall be conclusively presumed to have been made in contemplation of death."

5. When any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof, by any such transfer, whether made before or after the passage of this act.

6. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will.

7. The tax, so imposed shall be upon the market value of such property at the rates hereinafter prescribed and only upon the excess of the exemptions hereinafter granted.

§ 4. The following exemptions from the tax are hereby allowed:

1. All property transferred to municipal corporations within the state for strictly county, town or municipal purposes, or to the bishop, rector, pastor, trustee, board of trustees, or governing body of any educational or religious, institution who shall use the property, so transferred solely for religious, charitable or educational purposes, within the state, or to corporations of this state organized under its laws solely for religious, charitable or educational purposes, which shall use the property so transferred, exclusively for the purpose of their organization, within the state, shall be exempt.

NOTE.—The amendment of 1917 adds the following: "said exemptions to be taken out of the first twenty-five thousand dollars of each beneficial interest in the estate."

The rest of section 4 prescribes the exemptions set forth in the table.

§ 5. Makes the tax a lien, the executor or administrator personally liable and he must produce receipt to obtain final accounting.

§ 6. If such tax is paid within one year from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accruing thereof, interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued, unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause or delay, such tax shall not be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged.

In all cases when a bond shall be given under the provisions of section 9 of this act, interest shall be charged at the rate of six per centum from the accrual of the tax, until the date of payment thereof.

§ 7. Every executor, administrator or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate.

Any such administrator, executor or trustee having in charge or in trust any legacy or property for distribution subject to such tax shall deduct the tax therefrom, and within thirty days therefrom shall pay over the same to the county treasurer as herein provided.

If such legacy or property be not in money he shall collect the tax thereon upon the appraised value thereof from the person entitled thereto.

He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this act, to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the administrator, executor or trustee and the tax shall remain a lien or charge on such real property until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the legacy might be enforced, or by the prosecuting attorney under section 16 of this act.

If any such legacy be given in money to any such person for a limited period, the administrator, executor or trustee shall retain the tax on the whole amount, but if it be not in money he shall make application to the court having jurisdiction of an accounting by him to make an apportionment if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

§ 8. If any debt shall be proved against the estate of the decedent after the payment of the legacy, or distributive share thereof, from which any such tax has been deducted, or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by the order of the circuit court having jurisdiction thereof on notice to the auditor of state to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee if the tax has not been paid to the county treasurer or repaid by such treasurer or state treasurer, if such tax has been paid to him. When any amount of said tax shall have been paid erroneously into the state treasury it shall be lawful for the auditor of state, upon satisfactory proofs presented to him of the facts, to require the amount of such erroneous or illegal payment to be refunded to the executor, administrator, trustee, person or persons who have paid any such tax in error from the treasury; or the said auditor of state may order, direct and allow the treasurer of any county to refund the amount of any illegal or erroneous payment of such tax out of the funds in his hands or custody to the credit of such taxes, and credit him with the same in his quarterly account rendered to the auditor of state under this act; *provided, however*, that all applications for such refunding of erroneous taxes shall be made within one year from the payment thereof, or within one year after the reversal or modification of the order fixing such tax.

§ 9. Any beneficiary of any property chargeable with a tax under this act and any executors, administrators and trustees thereof may elect within eighteen months from the date of the transfer thereof as herein provided not to pay such tax until the person or persons beneficially interested therein shall come into the actual possession or enjoyment thereof. The person or persons so elected shall give a bond to the state in a penalty of three times the amount of any such tax, with such sureties as the circuit court of the proper county may approve, conditioned for the payments of such tax and interest thereon, at such time or period as the person or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be filed in the circuit court. Such bond must be executed and filed and a full return of such property upon oath made to the circuit court within one year from the date of such transfer thereof as herein provided, and such bond must be renewed every five years.

§ 10. Whenever a decedent appoints one or more executors or trustees and in lieu of their allowance makes a devise or bequest of money or property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said devises or bequests, or residuary legacies, exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the court having jurisdiction of their accounts shall fix the amount of their compensation.

§ 11. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligation in this state standing in the name of a decedent liable to any such tax, the tax shall be paid to the treasurer of the proper county on

the transfer thereof. No safe deposit company, bank or other institution, person or persons holding securities or assets of a decedent shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request unless notice of the time and place of such intended transfer be served upon the auditor of state and county treasurer at least ten days prior to said transfer; nor shall any such safe deposit company, bank or other institution, person or persons deliver or transfer any securities or assets of the estate of a non-resident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of this act unless the auditor of state consents thereto in writing; and it shall be lawful for the said county treasurer or auditor of state personally, or by representative, to examine all securities or assets at the time of such delivery or transfer.

Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided, shall render said safe deposit company, trust company, bank or other institution, person or persons, liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of this act.

§ 12. Gives the circuit court having jurisdiction to grant letters the jurisdiction in transfer tax matters.

§ 13. Subdivision 1 was amended by the Laws of 1917 to read as follows:

"The circuit court upon the application of any interested party, including the auditor of state, state board of tax commissioners, county treasurer, or upon its own motion, shall order the county assessor of the county where said court is sitting, or the inheritance tax appraiser, as the case may be, to fix the fair market value at the time of the transfer thereof of the property of persons whose estates shall be subject to the payment of any tax imposed by this act; and the executors, administrators or trustees of said estates shall, within thirty days of the making of said order by the court, file with said appraiser, a complete schedule of all the property, both real and personal, of which the decedent died seized, or possessed, and all property, both real and personal, which said decedent transferred or conveyed within two years of his death, without valuable consideration, together with an itemized statement of the indebtedness of said decedent: *provided*, that if said county assessor be related to the decedent or any beneficiary by consanguinity or affinity, within the third degree, said county assessor shall thereby be disqualified to appraise said property and said court shall appoint a competent and qualified person to appraise said property."

Sections 14 to 25 provide the usual proceedings for the valuation of estates and the collection of the tax, closely following the New York practice. All the provisions regarding life estates and remainders and the present taxation of remainders at the highest possible rate are adopted from the New York statute, including the provision for the compromise of uncertain tax claims. Life estates and remainders are computed on mortality tables on the five per cent basis.

§ 26.(1) The words "estate" and "property," as used in this act, shall be taken to mean the property or interest therein passing or transferred to individual or corporate legatees, devisees, heirs, next of kin, grantees, donees, or vendees, and not as the property or interest therein of the decedent, grantor, donor or vendor, and shall include all property or interest therein, whether situated within or without this state.

2. The words "tangible property," as used in this act, shall be taken to mean corporeal property such as real estate and goods, wares and merchandise, and shall not be taken to mean money, deposits in bank, shares of stock, bonds, notes, credits, or evidences of an interest in property or evidences of debt.

3. The words "intangible property," as used in this act, shall be taken to mean incorporeal property, including money, deposits in banks, shares of stock, bonds, notes, credits, evidences of an interest in property and evidences of debt.

4. The word "transfer," as used in this act, shall be taken to include the

passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift, in the manner herein described.

5. The words "the intestate laws of this state," as used in this act, shall be taken to refer to all transfers of property, or any beneficial interest therein, effected by the statute of descent and distribution and the transfer of any property, or any beneficial interest therein, effected by operation of law upon the death of a person omitting to make a valid disposition thereof.

§ 27. All taxes levied and collected under this act, less any expenses of collection, shall be paid into the treasury of the state for the use of the state, and shall be applicable to the expenses of the state government, and to such other purposes as the legislature may by law direct.

§ 28. Wherever a power is conferred by this act upon the circuit court the same power shall be deemed to be conferred upon the probate and superior courts in those counties which have a probate or superior court as a court of record with jurisdiction in probate matters.

Prior statutes: None.

IOWA.

Taxes only collaterals and strangers whether resident or non-resident.

CLASS OR RELATIONSHIP	Exemptions	Rates
Husband, wife, father, mother, lineal descendant, adopted child or lineal descendant of such child.	All	None
Religious and educational societies, public libraries and art galleries, public hospitals, charitable and cemetery associations.	All	None
Aline non-resident in United States, brother or sister.....	If less than \$1,000.	10%
All other aliens not residents of the United States.....	If less than \$1,000.	20%
All others.....	If less than \$1,000.	5%

NOTE.—Under a treaty containing the "most favored nation" clause the tax discriminating against collateral alien heirs is void. *Brown v. Daly*, 172 Iowa 379.

LAWS OF 1911, CHAPTER 68.

§ 1. The estates of all deceased persons, whether they be inhabitants of this state or not, and whether such estates consist of real, personal or mixed property, tangible or intangible, and any interest in, or income from any such estate or property, which property is, at the death of the decedent owner, within this state or is subject to, or thereafter, for the purpose of distribution, is brought within this state and becomes subject to the jurisdiction of the courts of this state, or the property of any decedent, domiciled within this state at the time of the death of such decedent, even though the property of such decedent so domiciled was situated outside of the state, except real estate located outside of the state passing in fee from the decedent owner, which shall pass by will or by the statutes of inheritance of this or any other state or country, or by deed, grant, sale, gift or transfer made in contemplation of the death of the donor, or made or intended to take effect in possession or enjoyment after the death of the grantor or donor, to any person, or for any use in trust or otherwise, other than to or for the use of persons, or uses exempt by this act shall be subject to a tax.

The rest of the section and the first five subdivisions of section 2 are covered by the foregoing table.

§ 2. Subd. 6. Bequests for the care and maintenance of the cemetery or burial lot of decedent and his family; and bequests not to exceed five hundred dollars (\$500.00) in any estate, to or for the performance of a religious service or services by some person regularly ordained, authorized or licensed by any religious society to perform such service to be performed for or in behalf of the testator, or some person named in his last will, provided such person so named is, or would be exempt from the tax imposed by this act.

Subd. 7. When the property passes to a municipal or political corporation within this state for a purely public purpose.

§ 3. The term "debts" as used in this act shall include, in addition to debts owing by the decedent at the time of his death, the local or state taxes due from the estate in January of the year of his death, a reasonable sum for funeral expenses, court costs, the cost of appraisement made for the purpose of assessing the collateral inheritance tax; the statutory fees of executors, administrators or trustees estimated upon the appraised value of the property, the amount paid by the executor or administrator for a bond; the attorney fee in a reasonable amount to be approved by the court, for the ordinary probate proceedings in said estate, and no other sum; but said debts shall not be deducted unless the same are approved and allowed by the court within eighteen (18) months from the death of the decedent, as established claims against the estate, unless otherwise ordered by the judge or court of the proper county.

§ 4. If no will is offered or administration had within four months the state treasurer may apply.

§ 5. Provides for the appointment of appraisers.

Sections 6, 7 and 8 provide for proceedings before appraisers, notice to parties in interest, objections and appeal to the court for reappraisal.

§ 9. Requires an appraisal at market value within ninety days.

§ 10. Provides that where value is certain appraisal may be dispensed with on consent of the treasurer.

Sections 11 and 12 provide for the immediate taxation of life estates and remainders.

Sections 13 and 14 provide for the filing of a bond by remainderman and its renewal every two years if it is desired to postpone payment of tax until the remainder falls in; but this need not be done if part of the remainder is in real estate and the tax is secured by its lien thereon.

§ 15. Provides that the bond shall be twice the amount of the tax and in no case less than \$500.

§ 16. Imposes a fine of \$200 for removing property from the state liable to tax without paying it or filing a bond.

§ 17. Provides for determining value of life estates and remainders by mortality tables on basis of 4 per cent.

Sections 18 and 19 require the executor or administrator to collect the tax from the beneficiaries; gives them power of sale of property to pay it, and gives the state treasurer right of action for tax against executors or administrators or beneficiaries. The court may extend time of payment on filing a bond. If the legacy is in money the amount of the tax may be deducted.

§ 20. Provides that no final settlement of accounts shall be allowed unless it shows that the tax has been paid.

§ 21. Gives the district court having probate jurisdiction the jurisdiction over tax proceedings.

§ 22. Taxes excess over reasonable compensation of bequest to executors in lieu of commissions.

§ 23. Where legacy charged on real estate heir must deduct tax before paying same and tax declared a lien.

§ 24. Taxes must be paid within 18 months of death, thereafter interest at 8 per cent.

§ 25. The treasurer may require information as to estate from executors or administrators before issuing receipt for tax.

§ 26. Requires records of tax liens to be kept by the court.

§ 27. Upon the appointment and qualification of such executor, administrator and testamentary trustee, the clerk issuing the letters shall at the

same time deliver to him a blank form upon which he shall be required to make detailed report of the following facts:

- (1) Name and last residence of decedent.
- (2) Date of death.
- (3) Whether or not he left a will.
- (4) Name and post-office of executor, administrator or trustee.
- (5) Name and post-office of surviving wife or husband if any.
- (6) If testate, name and post-office of each beneficiary under will.
- (7) Relationship of each beneficiary to the testator.
- (8) If intestate, name and post-office of each heir at law.
- (9) Relationship of each heir at law to decedent.
- (10) Inventory of all real estate of the decedent, giving amount and description of each tract.
- (11) Whether the property passes in possession and enjoyment in fee for life or for a term of years.

Within thirty days after his qualification, each executor, administrator and testamentary trustee shall make and return to the clerk, under oath, a full and detailed report as indicated in the preceding paragraph, any will to the contrary notwithstanding, and upon his failure to do so, the clerk shall forthwith report his delinquency to the district court if in session, or to a judge of said court if in vacation, for such order as may be necessary to enforce an observance of this section. If it appears from the inventory or report so filed that the real estate or any part of it is subject to an inheritance tax it shall be the duty of the executor or administrator or of any person interested in the property if there be no administration, to cause a lien of the same to be entered upon the lien book in the office of the clerk of the court in each county where each particular tract of said real estate is situated, and when said real estate or any interest therein, is subject to such tax, no conveyance either before or after the entering of said lien, shall discharge the real estate so conveyed from said lien, no final settlement of the account of any executor, administrator or trustee shall be accepted or allowed unless a strict compliance with the provisions of this section has been had by such person. Upon the filing of such report, the clerk of the court, shall immediately forward a true copy thereof to the treasurer of state.

§ 28. Permits the court to extend time for filing inventory.

§ 29. Requires persons entitled to property subject to tax within ninety days to make report to the court similar to that required by section 27.

§§ 30-31. Provide for records to be kept by the clerk of the county court.

§ 32. Prescribes reports to be made by the clerks.

§§ 33-35. Prescribe the duties of county attorneys in collecting the tax, regulate their fees and require them to make reports to the court.

§ 36. Regulates costs.

§ 37. No safe deposit company, trust company, bank or other institution, person or persons holding securities or assets of the decedent shall deliver or transfer the same to the executor, administrator or legal representative of said decedent unless the tax for which such securities or assets are liable under this act shall be first paid, or the payment thereof is secured by bond as herein provided. It shall be lawful for and the duty of the treasurer of state personally, or by any person by him duly authorized, to examine such securities or assets at the time of any proposed delivery or transfer. Failure to serve ten days' notice of such proposed transfer upon the treasurer of state or to allow such examination on the delivery of such securities or assets to such executor, administrator or legal representative shall render such safe deposit company, trust company, bank or other institution, person or persons liable for the payment of the tax upon such securities or assets as provided in this act.

§ 38. If a foreign executor, administrator or trustee shall assign or transfer any corporate stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the treasurer of state on or before the transfer thereof; otherwise the corporation permitting its stock to be so transferred shall be liable to pay

such tax, interest and costs and it is the duty of the treasurer of state to enforce the payment thereof.

§ 39. All Iowa corporations organized for pecuniary profit, shall on July 1st of each year, by its proper officers under oath make a full and correct report to the treasurer of state of all transfers of its stocks made during the preceding year by any person who appears on the books of such corporation as the owner of such stock, when such transfer is made to take effect at or after the death of the owner or transferor, and all transfers which are made by an administrator, executor, trustee, referee, or any person other than the owner or person in whose name the stocks appeared of record on the books of such corporation, prior to the transfer thereof. Such report shall show the name of the owner of such stocks and his place of residence, the name of the person at whose request the stock was transferred, his place of residence and the authority by virtue of which he acted in making such transfer, the name of the person to whom the transfer was made, and the residence of such person; together with such other information as the officers reporting may have relating to estates of persons deceased who may have been owners of stock in such corporation. If it appears that any such stock so transferred is subject to tax under the provisions of this act, and the tax has not been paid, the treasurer of state shall notify the corporation in writing of its liability for the payment thereof, and shall bring suit against such corporation as in other cases herein provided unless payment of the tax is made within sixty (60) days from the date of such notice.

§ 40. Whenever any property belonging to a foreign estate, which estate in whole or in part passes to persons not exempt herein from such tax, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction, and with the treasurer of state, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate.

§ 41. Whenever any property, real or personal, within this state belongs to a foreign estate and said foreign estate passes in part exempt from the tax imposed by this act and in part subject to said tax and there is no specific devise of the property within this state to direct heirs or if it is within the authority or discretion of the foreign executor, administrator or trustee administering the estate to dispose of the property not specifically devised to direct heirs or devisees in the payment of debts owing by the decedent at the time of his death, or in the satisfaction of legacies, devises, or trusts given to direct or collateral legatees or devisees or in payment of the distributive shares of any direct and collateral heirs, then the property within the jurisdiction of this state, belonging to such foreign estate, shall be subject to the tax imposed by this act, and the tax due thereon shall be assessed as provided in the next preceding section of this act relating to the deduction of the proportionate share of indebtedness. Provided, however, that if the value of the property so situated exceeds the total amount of the estate passing to other persons than those exempt hereby from the tax imposed by this act such excess shall not be subject to said tax.

§ 42. Provides for the compromise of uncertain tax claims by the state treasurer and attorney-general.

§ 43. Whenever the heirs or persons entitled to any estate, or any interest therein, are unknown or their place of residence cannot with reasonable certainty be ascertained, a tax of 5 per cent. shall be paid to the treasurer of state upon all such estates or interests, subject to refund as provided herein in other cases; provided, however, that if it be afterwards determined that any estate or interest passes to aliens, there shall be paid within sixty (60)

days after such determination and before delivery of such estate or property an amount equal to the difference between 5 per centum, the amount paid, and the amount which such person should pay under the provisions of this act.

§ 44. When within five years after the payment of the tax, a court of competent jurisdiction may determine that property upon which a collateral inheritance tax has been paid is not subject to or liable for the payment of such tax, or that the amount of tax paid was excessive, so much of such tax as has been overpaid to the treasurer of state shall be returned or refunded to the executor or administrator of such estate, or to those entitled thereto, when a certified copy of the record of such court showing the fact of non-liability of such property to the payment of such tax has been filed with the executive council of the state, the executive council shall if the case has been finally determined issue an order to the auditor of state directing him to issue a warrant upon the treasurer of state to refund such tax. Such order of court shall not be given until fifteen days' notice of the application therefor shall have been given to the treasurer of state of the time and place of the hearing of such application, which notice shall be served in the same manner as provided for original notices.

§ 45. Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

When an estate, devise, or legacy can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting.

When a devise, bequest or transfer is one in part contingent, and in part vested so that the beneficiary will come into possession and enjoyment of a portion of his inheritance on or before the happening of the event upon which the possible defeating contingency is based, a tax shall be imposed and collected upon such bequest or transfer as upon a vested interest, at the highest rate possible under the terms of this act if no such contingency existed; provided, that in the event such contingency reduces the value of the estate or interest so taxed, and the amount of tax so paid is in excess of the tax for which such bequest or transfer is liable upon the removal of such contingency, such excess shall be refunded as is provided in section forty-four (44) of this act in other cases.

§ 46. In the construction of this act, the words "collateral heirs" shall be held to mean all persons who are not specifically exempt from the tax imposed by the provisions hereof. The word "person" shall include a plural as well as singular, and artificial as well as natural persons. This act shall not be construed to confer upon a county attorney authority to represent the state in any case, and he shall represent the treasurer of state only when especially authorized by him to do so. This act shall apply to all estates subject to taxation under the law repealed by this act if the tax for which such estates are liable shall not have been paid prior to the taking effect of this act.

§ 47. Provides for records to be kept by the state treasurer.

§ 48. Repeals former statutes.

Prior Statutes: 1896, Vol. 26, ch. 28; 1898, Vol. 27, ch. 37, 1900, Vol. 28, ch. 51; 1902, Vol. 29, chapters 55 and 63; 1904, Vol. 30, ch. 51; 1906, Vol. 31, ch. 54; 1909, Vol. 33, ch. 92.

Amendments: Unimportant amendments are made by L. 1913, chapters 120 and 121.

KANSAS.

Taxes property within the state of non-residents, collaterals and strangers.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Exemptions	Rates of tax				
CLASS A Husband, wife, lineal ancestors, lineal descendants, adopted child and its lineal descendants, wife or widow of a son or husband of a daughter.	All	None.				
		Up to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	Excess over \$500,000
CLASS B Brothers and sisters of decedent....	\$5,000	3%	5%	7½%	10%	12½%
CLASS C All others, except charitable bequests mentioned in section 1.	None	5%	7½%	10%	12½%	15%

NOTE.—Where the beneficiary is entitled to property out of the state the exemption is pro rated.

LAWS 1915, CHAPTER 357, BECAME A LAW APRIL 10, 1915.

(Amended as to procedure by Chapter 319, L. 1917.)

Section 1. All property, corporeal or incorporeal, and any interest therein, within the jurisdiction of the state, whether belonging to the inhabitants of the state or not, which shall pass by will or by the laws regulating intestate succession, or by deed, grant or gift made in contemplation of death, or made or intended to take effect in possession or enjoyment after the death of the grantor, to any person, absolutely or in trust —except in case of a *bona fide* purchase for full consideration in money or money's worth; and except property to or for the use of literary, educational, scientific, religious, benevolent and charitable societies or institutions: *Provided*, such use entitles the property so passing to be exempt from taxation; and except property to or for the use of the state, a county or a municipality for public purposes; shall be taxed as herein provided.

The section then prescribes the rates and exemptions as shown in the foregoing table.

§ 2. Provides that the tax shall be due within one year of death, or, if a gift in contemplation of death, at the time of the transfer, makes the tax a lien but provides that the lien on personal property is satisfied if it is sold for value by an executor or administrator and, in case of real estate, if a bond to pay the tax is filed.

§ 3. Provides that remaindermen may defer payment of tax until remainder falls in by filing a sufficient bond and renewing it every five years.

§ 4. Provides for the valuation of life estates and remainders on American experience tables on the basis of 5 per cent. and makes further provision for the filing of a bond by remaindermen in three times the amount of the tax if payment is elected to be deferred.

§ 5. Provides for payment of tax on contingent remainders when they accrue at their full value undiminished by the life estate and for compromise of tax in such cases on consent of the attorney-general.

§ 6. Requires the executor or administrator to deduct the tax from money legacy or distributive share or to collect it from beneficiary before delivery of property.

§ 7. Requires the heir to deduct the tax before paying legacy when it is a charge on real estate.

§ 8. Provides that where the will directs payment of the tax out of a fund no tax shall be charged against the amount so appropriated.

§ 9. Provides that the probate court may authorize the sale of real estate to pay the tax as in case of debts.

§ 10. An inventory and appraisal under oath of every estate shall be filed in the probate court by the executor, administrator or trustee within three months after his appointment. If he neglects or refuses to file such inventory and appraisal he shall be liable to a penalty of not more than five thousand dollars, which shall be recovered in the proper district court by the attorney-general or county attorney of the proper county at the instance of the tax commission, in the name of the state, for the use of the state; and the probate judge shall notify the tax commission within thirty days after the expiration of said three months of the failure of any executor, administrator or trustee to file an inventory and appraisal in his office.

§ 11. The probate judge shall record the inventory and appraisal of every estate which is filed in his office, and he shall, within thirty days after the same has been filed, send by mail to the tax commission such inventory and appraisal or a copy thereof. The probate judge shall also, within the same period, send by mail to the tax commission a copy of the will of the decedent, if such has been allowed by the probate court. The probate judge shall also furnish such copies of papers in his office as the tax commission shall require, and shall furnish information as to the records and files in his office in such form as the tax commission may require. The tax commission shall excuse the probate court from filing inventories or copies of inventories and of wills of estates no part of which appears to be subject to a tax under the provisions of this chapter.

§ 12. Provides that where it is made to appear by petition of any party in interest that administration is not necessary except to determine the tax, if any, the tax proceedings may be had on such petition. If no will has been offered or administration had within three months the tax commission may proceed in the same way.

§ 13. If a foreign executor, administrator or trustee assigns or transfers any stock in any national bank located in this state or in any corporation organized under the laws of this state owned by a deceased non-resident at the date of his death and liable to a tax under the provisions of this act, the tax shall be paid to the county treasurer of the proper county at the time of such assignment or transfer; and if it is not paid when due, such executor, administrator or trustee shall be personally liable therefor until it is paid. A bank located in this state or a corporation organized under the laws of this state which shall record a transfer of any share of its stock made by a foreign executor, administrator or trustee, or issue a new certificate for a share of its stock at the instance of a foreign executor, administrator or trustee, before all taxes imposed thereon by the provisions of this act have been paid, shall be liable for such tax in an action of contract brought by the county attorney of the proper county or the attorney-general in the name of the state and at the instance of either the probate court or the tax commission.

§ 14. Securities or assets belonging to the estate of a deceased non-resident shall not be delivered or transferred to a foreign executor, administrator or legal representative of said decedent without serving notice upon the tax commission of the time and place of such intended delivery or transfer seven days at least before the time of such delivery or transfer. The tax commission, by any member or by representative, may examine such securities or assets prior to the time of such delivery or transfer. Failure to serve such notice or to allow such examination shall render the person or corporation making the delivery or transfer liable to the payment of the tax due upon said securities or assets, in an action brought by the county attorney of the proper county or the attorney-general in the name of the state.

§ 15. If a person who has paid such tax afterward refunds a portion of the property on which it was paid, or if it is judicially determined that the

whole or any part of such tax ought not to have been paid, such tax, or the due proportion thereof, shall be repaid to him by the executor, administrator or trustee.

§ 16. The value of the property upon which the tax is computed shall be determined by the tax commission and notified by it to the person or persons by whom the tax is payable and to the probate court and county treasurer of the proper county, and such determination shall be final unless the value so determined shall be reduced by proceedings as herein provided. At any time within three months after such determination the probate court shall, upon the application of any party interested in the succession, or on application of the executor, administrator or trustee, appoint three disinterested appraisers, who, first being sworn, shall appraise such property at its actual value in money as of the day of the death of the decedent, and shall make return thereof to said court. Such return, when accepted by said court, shall be final: *Provided*, that any party aggrieved by such appraisal shall have an appeal upon matters of law. One-half of the fees of said appraisers, as determined by the judge of said court, shall be paid by the county treasurer, and one-half of said fees shall be paid by the other party or parties to said proceedings.

The remaining sections 16 to 27 relate to procedure in collecting the tax which are largely repealed by the 1917 amendment.

AMENDMENT OF 1917.

CHAPTER 319.

Relating to the Taxation of Legacies and Successions; State Tax Commission Made Inheritance Tax Commission.

An Act relating to the assessment and taxation of legacies and successions, creating an Inheritance Tax Commission and amending sections 11219 and 11221 of the General Statutes, 1915, and defining certain terms in sections 11203, 11219 and 11221.

Be it enacted by the Legislature of the State of Kansas:

Section 1. From and after the passage of this act the Tax Commission shall constitute the Inheritance Tax Commission of the State of Kansas, and shall, as such, be charged with the duty of administering all laws providing for the assessment and taxation of legacies and successions within this state, and all duties relative to legacy and succession taxes and assessment now imposed by law upon the Tax Commission shall be performed by said Inheritance Tax Commission. The member of said commission who has served longest as member of the Tax Commission shall be chairman, and the secretary of the Tax Commission secretary of said Inheritance Tax Commission. The words "Tax Commission" whenever and wherever used in chapter 357, Laws of 1915, and in acts amendatory thereof and supplemental thereto, shall be taken and held to mean Inheritance Tax Commission.

§ 2. That section 11219 of the General Statutes of 1915 be and the same is hereby amended so as to read as follows: Sec. 11219. The Inheritance Tax Commission shall determine the amount of tax due and payable upon any estate or upon any part thereof, and shall certify the amount so due and payable to the probate court and to the county treasurer and to the person or persons by whom the tax is payable; but in the determination of the amount of any tax said Inheritance Tax Commission shall not be required to consider any payments on account of debts or expenses of administration which have not been allowed by the probate court having jurisdiction of the estate. Payment of the amount so certified shall be a discharge of the tax. Any executor, administrator, trustee or grantee who is aggrieved by any determination of said Inheritance Tax Commission may, at any time before said estate shall be finally closed, and after the payment of such tax to the county treasurer, apply by petition to said Inheritance Tax Commission for

the abatement of said tax or any part thereof, and if said commission adjudge that said tax or any part thereof was wrongfully exacted it shall order an abatement of such portion of said tax as was assessed without authority of law. Upon final decision ordering an abatement of any portion of said tax the county treasurer shall refund, from any legacy and succession taxes in his hands, the amount adjudged to have been illegally exacted, with interest at the legal rate, without any further act or resolve making appropriation therefor; provided, however, that any such executor, administrator, trustee or grantee may apply to any district court of competent jurisdiction for a review of any such order, and until final decision shall be entered by any such court such money shall not be refunded by said county treasurer.

§ 3. That section 11221 of the General Statutes of 1915 be and the same is hereby amended so as to read as follows: Sec. 11221. The Inheritance Tax Commission, subject to the right of any party interested to apply to any district court of competent jurisdiction for review, shall hear and determine all questions relative to said tax, and the attorney-general, at the request of the Inheritance Tax Commission or of the county treasurer, shall represent the state in any proceedings brought to review any action of said Inheritance Tax Commission. If any probate court shall find that any such tax remains due and that proper proceedings have not been taken before said Inheritance Tax Commission for abatement thereof, it shall order the executor, administrator, or trustee to pay the same, with interest, and costs, and no question regarding the validity of such tax shall be heard in such court. And if it appears that there are no such goods or assets of the estate in his hands, the court may assess the amount of the tax against the executor, administrator, or trustee, as if for his own debt, and may enforce compliance with such order by proper procedure, as now authorized by probate practice; but the administrators, executors, trustees and grantees hereinbefore mentioned shall be personally liable only for such taxes as shall be payable while they continue in the said offices or have title as such grantees, respectively. In the cases where the tax is due and payable by and collectible from the beneficiary, all actions shall be prosecuted by the attorney-general or the county attorney of the proper county in the name of the state, and such actions may be brought in the same courts as other actions for money.

§ 4. Whenever any person shall exercise a power of appointment derived from any disposition of property, such appointment when made shall be deemed to be a disposition of property by the person exercising such power, taxable under the provisions of chapter 357, Laws of 1915, and of all acts and amendments thereof and in addition thereto, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by the donee by will; and whenever any person possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a disposition of property taxable under the provisions of sections 11219 and 11221 of the General Statutes of 1915, and all acts and amendments thereof, and in addition thereto shall be deemed to take place to the extent of such omissions or failure in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power taking effect at the time of such omission or failure.

§ 5. That original sections 11219 and 11221 of the General Statutes of 1915 be and the same are hereby repealed.

§ 6. This act shall take effect and be in force from and after its publication in the official state paper.

Approved March 13, 1917.

Published in official state paper March 26, 1917.

Prior Statutes: L. 1909, ch. 248; Repealed by L. 1913, ch. 330. No inheritance tax from January 25, 1913 to April 10, 1915.

KENTUCKY.

Taxes collaterals and strangers only.

Taxes property within the state of non-residents, collaterals and strangers.

TABLE OF RATES AND EXEMPTIONS

Father, mother, husband, wife, lawful issue, wife or widow, of a son, husband of daughter, adopted child and lawful lineal descendants of decedent.	All exempt.....	No tax
All others.....	\$500 exempt;	On all in excess of exemption, 5%

LAWS OF 1910, CHAPTER 36. BECAME A LAW MARCH 21, 1910.

Section 1. All property which shall pass, by will or by the intestate laws of this state, from any person who may die seized or possessed of the same while a resident of this state, or if such decedent was not a resident of this state at the time of death, which property, or any part thereof, shall be within this state, or any interest therein; or income therefrom, which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor or bargainor, or intended to take effect in possession or enjoyment after such death, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectancy, to any property, or to the income thereof.

The rest of the section fixes the rates and exemptions as above.

§ 2. When any grant, gift, devise, legacy or succession upon which a tax is imposed by section 1 of this article shall be an estate, income or interest for a term of years or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion of other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent, and the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale, determined in the manner provided in section 11 of this article and the tax prescribed shall be immediately due and payable to the sheriff or collector of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid: Provided, that the person or persons, or body politic or corporate, beneficially interested in the property chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case such person or persons or body politic or corporate, shall execute a bond to the commonwealth of Kentucky, in a sum of twice the amount of the tax arising upon personal estate, with such sureties as the county court may approve, conditioned for the payment of said tax and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the county clerk of the proper county: Provided, further, that such person shall make a full and verified return of such property to said court, and file the same in the office of the county clerk within one year of the death of the decedent, and within that period enter into such surety and renew the same every five years.

§ 3. Taxes bequests to executors in lieu of commissions at all in excess of reasonable value of services.

§ 4. Provides that all taxes are due at death. No interest for eighteen months, after that 10 per cent. If paid within nine months discount of 5 per cent. If not paid within eighteen months executor or administrator is required to give a bond.

§ 5. In case of necessary litigation or unavoidable delay interest may be reduced to 6 per cent.

§ 6. Any administrator, executor or trustee having in charge or trust any legacy or property for distribution subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money, he shall collect the tax thereon upon the fair cash value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount; but if it be not in money, he shall make application to the county court to make an apportionment if the case require it, of the sum to be paid into his hands by such legatees, and for such further orders relative thereto as the case may require.

§ 7. Gives power of sale of real estate to pay tax as in case of debts.

§ 8. Provides for tax receipts which must be produced by executor or administrator to secure final accounting.

§ 9. Provides for proportionate refund of tax where debts have been proved after distribution.

§ 10. Requires foreign executors to pay tax before assigning or transferring stock or loans within the state makes the corporation permitting it without payment of the tax liable.

§ 11. Provides for appraisal at fair market value and computation of life estates and remainders on mortality tables at 5 per cent. basis.

§ 12. Makes it a misdemeanor for an appraiser to accept any fee or reward.

§ 13. Gives the county court of the residence of decedent or situs of the property jurisdiction in transfer tax proceedings.

§§ 14-18. Provide for the collection of delinquent taxes.

§ 19. Repeals former statutes.

Prior Statute: L. 1906, ch. 22.

LOUISIANA.

Taxes property of non-residents within the state.

CLASS OR RELATIONSHIP	Amount of exemption	Rate of tax
Ascendants or descendants of deceased, surviving wife or husband. (Held to include adopted child.)	\$10,000	2% on all in excess of exemption.
Collateral relatives and strangers except charitable, educational and religious institutions.	None	5% on all.

LAWS 1906, CHAPTER 109, AS AMENDED BY LAWS 1912, CHAPTER 42.

Section 1. Prescribes above rates on all "inheritances, legacies and other donations mortis causa" and exempts bequests to "education, religious and charitable institutions" and provides an exemption: "When the property inherited, bequeathed or donated shall have borne its just proportion of taxes prior to the time of such donation, bequest or inheritance."

§ 2. Makes it unlawful for beneficiary to be in, or take possession without court order. In case he does he may not renounce and remain personally liable if he disposes of the property.

§ 3. Requires executor or administrator after paying debts to proceed before the court having jurisdiction of the probate to have the tax fixed.

§ 5. Requires the executor or administrator to pay the tax out of funds in his hands if sufficient, if not to collect from beneficiary or apply to the court for sale of the property.

§ 6. Forbids delivery to beneficiary until tax has been fixed and paid otherwise executor or administrator and bond personally liable. May not have discharge until tax paid or decree that none is due.

§ 7. Requires personal representatives to file inventory.

§ 8. Requires the heir to pay tax on legacy charged on real estate.

§ 9. Or must sell it to pay the tax.

§ 10. Forbids delivery of legacy until tax is paid. If delivered by heir he is personally liable.

§ 11. The tax collector within six months may bring proceedings and have a search for will.

§ 12. Should the will be found the tax collector may have it proved.

§ 13. If no will is found the tax collector must bring proceedings to fix the tax.

§ 14. Permits similar proceedings by beneficiary.

§ 15. Preserves the rights of creditors of deceased.

§ 16. Forbids entry or sale by heir or legatee until tax is paid.

§ 17. Be it further enacted, etc., No bank, banker, trust company, warehouseman, or other depositary and no person or corporation or partnership having on deposit or in possession or control any moneys, credits, goods or other things or interest rights of value for a person deceased, or in which he had any interest, and no corporation the stock or registered bonds of which are owned by a person deceased shall deliver or transfer such moneys, credits, stock, bonds or other things or rights of value to any heir or legatee of such deceased person, unless the tax due thereon under this act shall have been paid, or unless it be judicially determined in the manner herein prescribed that no tax is due by such heir or legatee. Otherwise the person or corporation so making delivery or transfer shall be liable for the said tax. but the order of a court of competent jurisdiction, directing such delivery or transfer, shall be full authority for the same.

§ 18. Places the burden of proving an exemption upon the person claiming it.

§ 19. Gives jurisdiction to the district court of the last domicile of decedent or where the property of a non-resident is located.

§ 20. Provides for representation of unknown heirs and non-residents.

§ 21. Fixes the fees of tax collectors.

§ 22. Provides for the appointment of attorneys to collect the tax.

§ 23. Be it further enacted, etc., In fixing the value of any legacy or donation *mortis causa* which consists in whole or in part of an annuity or usufruct or right of use or habitation, the court shall consider the expectancy of life of the legatee or donee according to the table known as the American experience table of mortality, at six per cent per annum compound interest.

§ 24. Be it further enacted, etc., The taxes hereby levied shall bear interest at the rate of two per cent per month, beginning six months after the death of the decedent; saving to any heir, legatee or donee the right to stop the running of interest against him by paying the amount of his tax with accrued interest, or by tendering the same to the tax collector in the manner prescribed by the general law; provided, however, that in cases in which the settlement of the succession is not unduly delayed, or in which the right of any party to receive an inheritance or legacy is contested, and in all cases in which the failure to pay tax on any legacy or inheritance within the period aforesaid is not imputable to the laches of the heir or legatee, the court may, in its discretion, remit such interest.

§ 25. Be it further enacted, etc., The costs of all proceedings under this act shall be borne by the mass of the succession; provided, that in cases in which it seems to him equitable to do so the judge shall have power to apportion the costs among the several parties, or allow any party to retain his costs out of any sum found to be due by him for tax hereunder. Provided, the provisions of this act shall affect all successions not finally closed, or in which the final account has not been filed.

Prior Statutes: There have been collateral inheritance taxes since 1828. Those of recent years are L. 1888, ch. 109; L. 1894, ch. 130; L. 1904, ch. 45.

MAINE

Taxed property of non-residents only where state of domicile also taxed such property, until April 7, 1917, when reciprocal provision was repealed. All property of non-residents within the state now taxed.

TABLE OF RATES

RELATIONSHIP	Exemption	Rates of tax above exemption up to \$50,000	\$50,000 to \$100,000	In excess of \$100,000
Father, mother, son, daughter, husband, wife, adopted child or adoptive parent.	\$10,000	1%	1½%	2%
Grandparents and other lineal ancestors of remoter degrees, grandchildren and other lineal descendants of remoter degrees, wife or widow or son, or husband or widower of daughter.	500	1%	1½%	2%
Brother, sister, uncle, aunt, nephew, niece, or cousin.	500	4%	4½%	5%
All other heirs or legatees except educational, domestic, charitable, benevolent or religious institutions.	500	5%	6%	7%

CHAPTER 8, REVISED STATUTES, 1903, AS AMENDED BY LAWS OF 1905, CHAPTER 124; LAWS OF 1909, CHAPTERS 186 AND 187; LAWS OF 1911, CHAPTER 163; LAWS OF 1913, CHAPTERS 128 AND 190; LAWS OF 1917, CHAPTER 266.

§ 69. All property within the jurisdiction of this state, any any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which shall pass by will, by the intestate laws of this state, by allowance of a judge of probate to a widow or child by deed, grant, sale or gift, except in cases of a *bona fide* purchase for full consideration in money or money's worth, and except as herein otherwise provided made or intended to take effect in possession or enjoyment after the death of the grantor, to any person in trust or otherwise except to or for the use of any educational, charitable, religious or benevolent institution in this state, the property of which is by law exempt from taxation, shall be subject to an inheritance tax for the use of the state as hereinafter provided.

Rates and exemptions are then prescribed as shown in the above table.

The section concludes: Administrators, executors and trustees, and any grantees under such conveyances made during the grantor's life shall be liable for such taxes, with interest, until the same have been paid. [As amended by chap. 266, L. 1917, repealing reciprocal provisions.]

§ 70. Whenever property shall descend by devise, descent, bequest or grant to a person for life or for a term of years and the remainder to another, except to or for the use of any educational, charitable, religious or benevolent institution in this state, the value of the prior estate shall be determined by the Actuaries' Combined Experience Table at four per cent compound interest and a tax imposed at the rate prescribed in the preceding section for the class to which the devisee, legatee or grantee of such estate belongs and a tax shall be imposed at the same time upon the remaining value of such property at the rate prescribed in said section for the class to which the devisee, legatee or grantee of such remainder belongs, subject to the exemptions provided in the preceding section.

In every case in which it is impossible to compute the present value of any interest by reason of such interest being conditioned upon the happening of a contingency or dependent upon the exercise of a discretion or subject to a power

of appointment or otherwise, the attorney-general may effect such settlement of the tax as he shall deem for the best interests of the state and payment of the sum so agreed upon shall be a full satisfaction of such tax.

§ 71. Taxes excess over reasonable compensation of bequest to executors in lieu of commissions.

§ 72. Makes taxes due at two years after death but if legacy paid before tax must be paid at same time. After two years interest at 6 per cent is charged. At the time of payment certificate of Probate Court showing amount due must be presented to state treasurer. Within two years the personal representatives of the deceased must petition the Probate Court to assess the tax. If not so done the attorney-general may petition. In either case he may appear in tax proceedings. The tax is a lien on real estate which may be satisfied by payment or filing a bond.

§ 73. Makes executors and administrators personally liable for tax and their bondsmen and an action of debt may be maintained against them for the tax.

§ 74. Prohibits delivery of property to legatee until the tax is paid.

§ 75. Where legacy is a charge on real estate the heir must deduct tax before paying legacy and the tax remains a lien until paid.

§ 76. Legacy in money tax to be deducted but if not in money court makes an apportionment.

§ 77. Gives power of sale to pay tax in same manner as to pay debts.

§ 78. Requires production of tax receipt before final settlement allowed.

§ 79. Provides for filing copy of inventory with attorney-general.

§ 80. Requires executors and administrators to inform board of assessors when real estate passes subject to the tax.

§ 81. Provides for appointment of appraisers of probate judge and valuation by them of estate at fair market value on due notice to all parties in interest.

§ 82. Gives the probate court having jurisdiction of estate the jurisdiction in transfer tax proceedings and gives the same right of appeal as in other cases.

§ 84. Fixes the fees on judges and registers of probate.

§ 85. Defines "person" as including corporations and "property" as including both real and personal property.

§§ 86, 87 and 88 make provisions for the enforcement of delinquent taxes.

§ 89. Where a non-resident decedent has more than one heir or his property is divided among more than one legatee, each heir, or in the case of a will, each legatee shall be held to receive such proportion of the property within the jurisdiction of this state as the amount of all property received by him as such heir or legatee bears to all the property of which said decedent died possessed. The amount of property of the estate of a non-resident which shall be exempt from the payment of the inheritance tax under section 1 shall be only such proportion of the whole exempted amount which is provided therein for the estates of resident decedents as the amount of the estate of the non-resident actually or constructively in his state bears to the total value of the non-resident decedent's estate wherever situated.' [As amended by chap. 266, L. 1917.]

§ 90. Provides for reports by town and city clerk to the state treasurer of persons dying whose estate might be subject to tax.

§ 91. When the personal estate passing from any person, not an inhabitant or resident of this state, as provided in section sixty-nine of chapter eight of the revised statutes, shall consist in whole or in part of shares of any railroad, or street railway company or telegraph or telephone company incorporated under the laws of this state and also of some other state or country, so much only of each share as is proportional to the part of such company's lines lying within this state shall be considered as property of such person within the jurisdiction of this state for the purposes of this chapter.

§ 92. Made reciprocal provisions concerning the property of non-residents and was repealed by chap. 266, L. 1917.

§ 93. Subject to the provisions of section ninety-two if a foreign executor, administrator or trustee assigns or transfers any stock in any national bank

located in this state or in any corporation organized under the laws of this state, owned by a deceased non-resident at the date of his death and liable to a tax under the provisions of this chapter, the tax shall be paid to the attorney-general at the time of such assignment or transfer; and if it is not paid when due such executor, administrator or trustee shall be personally liable therefor until it is paid. Subject to the provisions of section ninety-two a bank located in this state or a corporation organized under the laws of this state which shall record a transfer of any share of its stock made by a foreign executor, administrator or trustee, or issue a new certificate for a share of its stock at the instance of a foreign executor, administrator or trustee before all taxes imposed thereon by the provisions of this chapter have been paid, shall be liable for such tax in an action of debt brought by the attorney-general.

§ 94. Subject to the provisions of section ninety-two no person or corporation shall deliver or transfer any securities or assets belonging to the estate of a non-resident decedent to anyone unless authority to receive the same shall have been given by a probate court of this state, and upon satisfactory evidence that all inheritance taxes provided for by this chapter have been paid, guaranteed or secured as hereinbefore provided. Any person or corporation that delivers or transfers any securities or assets in violation of the provisions of this section shall be liable for such tax in an action of debt brought by the attorney-general.

§ 95. Provides for proceedings by attorney-general to collect tax.

§ 96. Provides that the statute shall not be retroactive.

§ 97. Requires the attorney-general to pay tax collected to the state treasurer.

Prior Statutes: L. 1893, ch. 146; L. 1895, ch. 96; L. 1901, ch. 225; L. 1903, ch. 156. The last being the present act.

Amendments: L. 1905, ch. 124, L. 1909, ch. 186 and 187; L. 1911, ch. 163, L. 1913, ch. 128; L. 1917, ch. 266.

MARYLAND

Taxes collaterals and strangers only.

Taxes personal property within the state of non-resident collaterals and strangers.

TABLE OF RATES

CLASS OR RELATIONSHIP	Exemption	Rates
Father, mother, husband, wife, children and lineal descendants.....	All.....	No tax
All others.....	\$500	If over \$500 5% on all

PUBLIC GENERAL LAWS OF MARYLAND, 1904, ARTICLE 81, SECTION 117, AS AMENDED BY LAWS 1908, CHAPTER 695.

Section 117. All estates, real, personal and mixed, money, public and private securities for money of every kind passing from any person who may die seized and possessed thereof, being in this state, or any part of such estate or estates, money or securities, or interest therein, transferred by deed, will, grant, bargain, gift or sale, made or intended to take effect in possession after the death of the grantor, bargainor, deviser or donor, to any person or persons, bodies politic or corporate, in trust or otherwise, other than to or for the use of the father, mother, husband, wife, children and lineal descendants of the grantor, bargainor or testator, donor or intestate, shall be subject to a tax of five per centum in every hundred dollars of the clear value of such estates,

money or securities; and all executors and administrators shall only be discharged from liability for the amount of such tax, the payment of which they be charged with, by paying the same for the use of this state, as herein-after directed; provided, that no estate which may be valued at a less sum than five hundred dollars shall be subject to the tax imposed by this section.

§ 118. Requires executors and administrators to pay the tax.

§ 119. Gives them power of sale.

§ 120. Tax must be paid within thirteen months or executor or administrator forfeits his commissions.

§ 121. The same persons who appraise the personal property must also value the real estate.

§ 122. Prescribes oath of appraisers.

§ 123. Where property is in two counties permits appointment of additional appraiser.

§§ 124 to 129. Prescribe duties of appraisers, make the tax a lien on real estate for four years and provide for its sale if necessary to pay the tax.

§ 130. Whenever any estate, real, personal or mixed, of a decedent shall be subject to the tax mentioned in the thirteen preceding sections, and there be a life estate or interest for a term of years, or a contingent interest, given to one party and the remainder or reversionary interest, to another party, the orphans' court of the county or city in which administration is granted shall determine in its discretion and at such time as it shall think proper what proportion the party entitled to said life estate, or interest for a term of years, or contingent interest, shall pay of said tax, and the judgment of said court shall be final and conclusive, and the party entitled to said life estate or interest for a term of years, or other contingent interest, shall within thirty days after the date of such determination pay to the register of wills his proportion of said tax; and thereafter the said court shall from time to time after the determination of the preceding estate and as the remainder of said estate shall vest in the party or parties entitled in remainder or reversion determine in its discretion what proportion of the residue of said tax shall be paid by the party or parties in whom the estate shall so vest; and the judgment of the said court shall be final and each of the parties successively entitled in remainder or reversion shall pay his proportion of said tax to the register of wills within thirty days after the date of such determination as to him; and the proportion of the tax so determined to be paid by the party entitled to the life interest or estate shall be and remain a lien upon such interest or estate for the period of four years after the date of the death of the decedent, who shall have died seized and possessed of the property; and the proportion of the tax so determined to be paid by the persons respectively entitled to the remainder, or reversionary interest, shall be a lien on such interest for the period of four years from the date of which such interest shall vest in possession.

§ 131. Whenever an interest in any estate, real, personal or mixed, less than an absolute interest, shall be devised or bequeathed to or for the use and benefit of any person or object not exempted from the tax under section 117, then only such interest so devised or bequeathed shall be liable for said tax; and it shall be the duty of the orphans' court of the county or city in which administration is granted, or any other court assuming jurisdiction over such administration, to determine as soon after administration is granted as possible, on application of such person or object, the value of such interest liable for said tax, by deducting from the whole value of the estate so much thereof as shall be the value of the interest therein, of any person who under said section 117, is exempt from said tax, and the residue thereof shall be the value of said interest upon which said tax is payable; and said tax so ascertained shall be paid by such person or object within ninety days from such ascertainment, with interest thereon at six per cent per annum, after the expiration of twelve (12) months from the date of the death of the decedent, under whose will or by whose intestacy said interest is acquired, if said tax has not sooner been paid, or within ninety days from the time that it shall be

ascertained that such person or object shall be entitled to any such interest in any estate; but such tax shall bear interest at the rate of six per cent per annum from the expiration of twelve (12) months from said death; but if such person or object shall fail to pay said tax, as above provided, then such person or object shall at the time when he, she or it comes into possession of such estate, pay a tax as provided for in said section 117, on the whole value thereof.

§ 132. Provides for sale of property within thirty days after decree if tax is not paid.

§ 133. Makes bond of executors and administrators liable for tax.

§ 134. Provides that letters of delinquent executor or administrator may be revoked and his bondsmen held liable.

§§ 136 to 141. Provide for the collection of delinquent taxes, reports, receipts and fees.

Prior Statutes: Maryland has taxed collateral inheritance since 1844. Those prior to 1904 for the last twenty years are as follows: L. 1890, ch. 249; L. 1892, ch. 473 and 564; L. 1894, ch. 493.

MASSACHUSETTS

No tax on non-residents except as to real property within the state.

TABLE OF RATES

RATE OF SUCCESSION TAX UNDER ACTS OF 1912, CHAPTER 678. IN EFFECT UPON THE ESTATES OF PERSONS DYING ON OR AFTER MAY 29, 1912

CLASS OR RELATIONSHIP	Exemption	Rate of tax					
	\$1,000 or under	Over \$1,000 but not over \$10,000	Over \$10,000 but not over \$25,000	Over \$25,000 but not over \$50,000	Over \$50,000 but not over \$250,000	Over \$250,000 but not over \$1,000,000	Over \$1,000,000
1. Charitable, educational or religious societies or institutions exempt from local taxation; trusts for charitable purposes to be carried out within Massachusetts; city or town in Massachusetts for public purposes.	No tax	No tax	No tax	No tax	No tax	No tax	No tax
2. Class A. Husband, wife, father, mother, child, adopted child, adoptive parent.	No tax	No tax	1%	1%	2%	3%	4%
3. Class A. Lineal ancestor, except father or mother; lineal descendant, except child; lineal descendant of adopted child; lineal ancestor of adoptive parent; wife or widow of a son; husband of a daughter.	No tax	1%	1%	1%	2%	3%	4%
4. Class B. Brother, sister, half brother, half sister, nephew, niece.	No tax	2%	3%	5%	6%	7%	8%
5. All others (including step-children).	No tax	5%	5%	5%	6%	7%	8%

In no event is the tax to reduce the share below the exempted amount.

RATES PRIOR TO MAY 29, 1912

RATE OF SUCCESSION TAX UNDER ACTS OF 1907, CHAPTER 563, AS CODIFIED AND AMENDED BY ACTS OF 1909, CHAPTER 490, PART IV., AND ACTS OF 1909, CHAPTERS 268 AND 527. IN EFFECT UPON THE ESTATES OF PERSONS DYING ON OR AFTER SEPT. 1, 1907, AND PRIOR TO MAY 29, 1912.

CLASS OR RELATIONSHIP	Exemption	Rate of tax				
	\$1,000 or under	Over \$1,000 but not over \$10,000	Over \$10,000 but not over \$25,000	Over \$25,000 but not over \$50,000	Over \$50,000 but not over \$100,000	Over \$100,000
1. Charitable, educational or religious societies or institutions exempt from local taxation; trusts for charitable purposes to be carried out within Massachusetts; city or town in Massachusetts for public purposes.	No tax	No tax	No tax	No tax	No tax	No tax
2. Class A. Husband, wife, father, mother, child, adopted child, adoptive parent.	No tax	No tax	1%	1%	1½%	2%
3. Class A. Lineal ancestor, except father or mother; lineal descendant, except child; lineal descendant of adopted child; lineal ancestor of adoptive parent; wife or widow of a son; husband of a daughter.	No tax	1%	1%	1%	1½%	2%
4. Class B. Brother, sister, half brother, half sister, nephew, niece.	No tax	3%	3%	4%	4%	5%
5. All others (including step-children)...	No tax	5%	5%	5%	5%	5%

In no event is the tax to reduce the share below the exempted amount.

LAWS OF 1909, CHAPTER 490, AS AMENDED BY LAWS 1912, CHAPTER 678, AND OTHER STATUTES TO JAN. 1, 1916.

Section 1. All property within the jurisdiction of the commonwealth, corporeal or incorporeal, and any interest therein, belonging to inhabitants of the commonwealth, and all real estate within the commonwealth, or any interest therein, belonging to persons who are not inhabitants of the commonwealth, which shall pass by will, or by the laws regulating intestate succession, or by deed, grant or gift, except in cases of a *bona fide* purchase for full consideration in money or money's worth, made or intended to take effect in possession or enjoyment after the death of the grantor, to any person, absolutely or in trust.

Then follow the rates and exemptions as shown in the foregoing table for 1912. The section concludes: All taxes under this act shall be paid out of and chargeable to capital and not income, unless otherwise provided in a will or codicil, or deed or other instrument creating the grant or gift, but nothing herein contained shall affect any right of the commonwealth to collect such tax or lien therefor.

Powers of appointment:

Chapter 527, L. 1909, provides:

§ 8. Whenever any person shall exercise a power of appointment derived from any disposition of property made prior to September first, nineteen hundred and seven, such appointment when made shall be deemed to be a disposition of property by the person exercising such power, taxable under the provisions of chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven, and of all acts in amendment thereof and in addition thereto, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by the donee by will; and whenever any person possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a disposition

of property taxable under the provisions of chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven and all acts in amendment thereof and in addition thereto shall be deemed to take place to the extent of such omission or failure in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

§ 2, chap. 490, L. 1909, applies to non-residents and is repealed.

§ 3. (As amended L. 1912, ch. 678,) Property of a resident of the commonwealth which is not therein at the time of his death shall not be taxable under the provisions of this part if legally subject in another state or country to a tax of like character and amount to that hereby imposed, and if such tax be actually paid or guaranteed or secured in accordance with law in such other state or country; if legally subject in another state or country to a tax of like character but of less amount than that hereby imposed and such tax be actually paid or guaranteed or secured as aforesaid, such property shall be taxable under this part to the extent of the difference between the tax thus actually paid, guaranteed or secured, and the amount for which such property would otherwise be liable hereunder.

§ 4. (As amended L. 1915, chap. 152.) Except as hereinafter provided, taxes imposed by the provisions of this act shall be payable to the treasurer and receiver general by the executors, administrators or trustees at the expiration of one year after the date of giving bond by the executors, administrators or trustees first appointed. If the probate court, acting under the provisions of section thirteen of chapter one hundred and forty-one of the Revised Laws, has ordered the executor or administrator to retain funds to satisfy a claim of a creditor, the payment of the tax may be suspended by the court to await the disposition of such claim. In all cases where there shall be a grant, devise, descent, or bequest to take effect in possession or come into actual enjoyment after the expiration of one or more life estates or a term of years, the taxes thereon shall be payable by the executors, administrators or trustees in office when such right of possession accrues, or, if there is no such executor, administrator or trustee, by the person or persons so entitled thereto, at the expiration of one year after the date when the right of possession accrues to the person or persons so entitled. If the taxes are not paid when due, interest shall be charged and collected from the time the same became payable. Property of which a decedent dies seized or possessed, subject to taxes as aforesaid, in whatever form of investment it may happen to be, and all property acquired in substitution therefor, shall be charged with a lien for all taxes and interest thereon which are or may become due on such property; but said lien shall not affect any personal property after the same has been sold or disposed of for value by the executors, administrators or trustees. The lien charged by this act upon any real estate or separate parcel thereof may be discharged by the payment of all taxes due and to become due upon said real estate or separate parcel, or by an order or decree of the probate court discharging said lien and securing the payment to the commonwealth of the tax due or to become due by bond or deposit as hereinafter provided, or by transferring such lien to other real estate owned by the owner or owners of said real estate or separate parcel thereof.

§ 5. In every case where there shall be a bequest or grant of personal estate made or intended to take effect in possession or enjoyment after the death of the grantor, to take effect in possession or come into actual enjoyment after the expiration of one or more life estates, or a term of years, whether conditioned upon the happening of a contingency or dependent upon the exercise of a discretion, or subject to a power of appointment or otherwise, the executor or administrator or grantee may deposit with the treasurer and receiver general a sum of money sufficient in the opinion of the tax commissioner to pay all taxes which may become due upon such bequest or grant, and the person or persons having the right to the use or income of such personal estate shall be entitled to receive from the commonwealth interest at the rate of two and one-half per cent per annum upon such deposit, and when said

tax shall become due the treasurer and receiver general shall repay to the persons entitled thereto the difference between the tax certified and the amount deposited; or any executor, administrator, trustee or grantee, or any person interested in such bequest or grant may give bond to a judge of the probate court having jurisdiction of the estate of the decedent, in such amount and with such sureties as said court may approve, with the condition that the obligor shall notify the tax commissioner when said tax becomes due and shall then pay the same to the treasurer and receiver general.

§ 6. Except as hereinafter provided, said tax shall be assessed upon the actual value of the property at the time of the death of the decedent. In every case where there shall be a devise, descent, bequest or grant to take effect in possession or enjoyment after the expiration of one or more life estates or a term of years, the tax shall be assessed on the actual value of the property or the interest of the beneficiary therein at the time when he becomes entitled to the same in possession or enjoyment. The value of an annuity or a life interest in any such property, or any interest therein less than an absolute interest, shall be determined by the "American Experience Tables" at four per cent compound interest.

§ 7. Provides for the immediate payment of future tax claims by beneficiary at his election. Where they are uncertain the tax commissioner may compromise with the consent of the attorney-general.

§ 8. Makes bequest to executors in lieu of commissions taxable in excess of reasonable compensation.

§ 9. Requires the executor or administrator to deduct the tax, collect it from the legatee or from the heir where it is a charge on real estate.

§ 10. Where the legacy is charged on real estate the heir is required to deduct the tax before paying the legacy and the tax is made a lien on the real estate.

§ 11. Where the will provides for payment of tax on legacy from another fund no tax imposed on money so provided.

§ 12. Executors or administrators may be authorized to sell real estate to pay the tax in the same way as in case of debts.

§ 13. Requires the executor or administrator to file a verified inventory and appraisal with the probate court by the tax commissioner within three months of appointment under penalty of \$1,000 fine.

§ 14. Requires the register of probate to furnish the tax commissioner with copies of the inventory, will and all other papers.

§§ 15 and 16 repealed by chap. 678, L. 1912.

§ 17. Requires notice of any petition to be owed on the tax commission.

§ 18. Provides refund of taxes erroneously paid.

§ 19. The value of the property upon which the tax is computed shall be determined by the tax commissioner and notified by him to the person or persons by whom the tax is payable, and such determination shall be final unless the value so determined shall be reduced by proceedings as herein provided. At any time within three months after such determination the probate court shall, upon the application of any party interested in the succession, or of the executor, administrator or trustee, appoint one disinterested appraiser or three disinterested appraisers, who, first being sworn, shall appraise such property at its actual market value, as of the day of the death of the decedent and shall make return thereof to said court. Such return, when accepted by said court, shall be final; *provided*, that any party aggrieved by such appraisal shall have an appeal upon matters of law. One half of the fees of said appraisers, as determined by the judge of said court, shall be paid by the treasurer and receiver general, and one half of said fees shall be paid by the other party or parties to said proceeding.

§ 20. The tax commissioner shall determine the amount of tax due and payable upon any estate or upon any part thereof, and shall certify the amount so due and payable to the treasurer and receiver general and to the person or persons by whom the tax is payable; but in the determination of the amount of any tax said tax commissioner shall not be required to consider any payments on account of debts or expenses of administration which have not been allowed by the probate court having jurisdiction of said estate. Pay-

ment of the amount so certified shall be a discharge of the tax. An executor, administrator, trustee or grantee who is aggrieved by any determination of the tax commissioner may, within one year after the payment of any tax to the treasurer and receiver general, apply by a petition in equity to the probate court having jurisdiction of the estate of the decedent for the abatement of said tax or any part thereof, and if the court adjudges that said tax or any part thereof was wrongly exacted it shall order an abatement of such portion of said tax as was assessed without authority of law. Upon a final decision ordering an abatement of any portion of said tax, the treasurer and receiver general shall pay the amount adjudged to have been illegally exacted, with interest, without any further act or resolve making appropriation therefor.

§ 21. Provides that the probate court having jurisdiction of the estate shall hear and determine all questions arising under the transfer tax statute with the usual rights of appeal.

§ 22. Gives the tax commissioner the right to move for administration if no probate proceedings are commenced within four months after death.

§ 23. Requires executor or administrator to show that tax has been paid or adjusted before final accounting allowed.

§ 24. Provides for the collection of unpaid taxes by the treasurer and receiver general.

§ 25. Provides that the law applies only to subsequent transfers.

§ 26. Concerns the construction of repealing acts.

§ 27. Is a saving clause as to other legislation.

Prior Statutes: L. 1891, ch. 425; L. 1892, ch. 379; L. 1893, ch. 432; L. 1895, ch. 307; L. 1895, ch. 430; L. 1896, ch. 108; L. 1900, ch. 371; L. 1901, ch. 277; L. 1901, ch. 297; L. 1902, ch. 473; L. 1903, ch. 248; L. 1903, ch. 251; L. 1903, ch. 276; L. 1904, ch. 421; L. 1905, ch. 367; L. 1905, ch. 470; L. 1906, ch. 436; L. 1907, ch. 452; L. 1907, ch. 563; L. 1908, pg. 840; L. 1908, ch. 268; L. 1908, ch. 624; L. 1909, ch. 266; L. 1909, ch. 268.

MICHIGAN

Taxes property of non-residents within the state except real estate of near relatives.

TABLE OF RATES

CLASS OR RELATIONSHIP	Exemption	Rate of tax
Grandparents, parents, husband, wife, child, brother, sister, wife or widow or son, husband of daughter, adopted or mutually acknowledged child, lineal descendants.	Wife, \$5,000; others, \$2,000	If property exceeds exemption 1% on all personal property.
All others.....	\$100	5% on all including real estate.

LAWS 1899, CHAPTER 188, AS AMENDED.

Section 1. That after the passage of this act a tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of one hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property, in the following cases:

First.—When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of this state:

Second.—When the transfer is by will or intestate law of property within the state, and the decedent was a non-resident of the state at the time of his death;

Third.—When the transfer is of property made by a resident or by non-resident; when such non-resident's property is within this state, by deed, grant,

bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor or intended to take effect in possession or enjoyment at or after such death. Such tax shall also be imposed when any such person or corporation becomes beneficially entitled in possession or expectancy to any property or the income thereof by any such transfer, whether made before or after the passage of this act. Such tax shall be at the rate of five per cent upon the clear market value of such property, except as otherwise prescribed in the next section.

§ 2. As amended by chap. 30, L. 1913, and chap. 198, L. 1915, prescribes the rates and exemptions as shown by the foregoing table.

§ 3. Makes the tax a lien on the property transferred and the transferee as well as the executor or administrator personally liable until paid. Provides for receipts which must be produced to entitle the executor or administrator to a discharge. Taxes accrue at death except in the case of remainders dependent upon some uncertain future event or contingency in which case they are due when the beneficiary comes into actual possession.

§ 4. Allows a discount of 5 per cent if the tax is paid within twelve months. If not paid within eighteen months interest from date of death at 8 per cent is charged. In case of unavoidable delay interest at 6 per cent from and of eighteen months is charged.

§ 5. Requires the executor or administrator to deduct the tax from a money legacy, to collect it from the beneficiaries in case of property to whom it may not be delivered until the tax is paid. If legacy is made a charge on real property the heir or devisee must deduct the tax before paying the legacy.

§ 6. Makes provision for proportionate fund if debts are proved after distribution.

§ 7. Provides that remaindermen may elect not to pay the tax until they get the property by filing a bond in three times the amount of the tax and an inventory of the property within one year of death and renewing bond every five years.

§ 8. Taxes bequests to executors in lieu of the tax in excess of reasonable value of services.

§ 9. As amended by chap. 17, L. 1913, and chap. 195, L. 1915, copies the Illinois statute with regard to transfers by foreign executors and the duties of banks and safe deposit companies to certify the comptroller, present on examination and retain enough assets to pay the tax or themselves become liable to penalty at suit of the attorney-general.

§ 10. Gives jurisdiction to the probate court administering the estate in transfer tax matters.

§ 11. Provides for the appointment of appraisers and for the computation of life estates and remainders by the commissioner of insurance on mortality tables at the 5 per cent rate.

§§ 12 and 13. Provide for hearings before the appraiser on due notice, his report, appeal and rehearing before the probate judge closely following the New York practice.

§ 14. Provides for proceedings to collect delinquent taxes.

§§ 15, 16 and 17. Provide for the furnishing of duplicate receipts, fees of the county treasurer and the keeping of records in the probate court.

§§ 18 to 20. Provide for details as to records, reports and the disposition of taxes collected.

§ 21. (As amended by St. 1907, c. 328.) The word "estate" and "property" as used in this act shall be taken to mean the property or interest therein of the testator, intestate, grantor, bargainor or vendor, passing or transferred to those not herein specifically exempted from the provisions of this act, and not as the property or interest therein passing or transferred to the individual legatees, devisees, heirs, next of kin, grantees, donees or vendees, and shall include all property or interest therein whether situated within or without this state and including all property represented or evidenced by note, certificate, stock, land contract, mortgage or other kind or character of evidence thereof, and regardless of whether any such evidence of property is owned, kept or possessed within or without this state. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein in

possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift in the manner herein prescribed. The words "county treasurer," "prosecuting attorney," as used in this act shall be taken to mean the county treasurer or prosecuting attorney of the county having jurisdiction in section ten of this act.

Amendments: L. 1903, ch. 195; L. 1907; L. 1907, ch. 328; L. 1909, ch. 44; L. 1911, ch. 73; L. 1913, ch. 17 and 30; L. 1915, ch. 195 and 198.

MINNESOTA

Taxes all property of non-residents within the state. A reciprocal provision inserted by L. 1911 was repealed by L. 1913, chap. 565.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount exemption	Graded rates of tax				
		Above exemption to \$15,000	\$15,000 to \$30,000	\$30,000 to \$50,000	\$50,000 to \$100,000	Excess over \$100,000
Wife or lineal issue	\$10,000	1%	1½%	2%	2½%	3%
Husband, lineal ancestor, adopted or mutually acknowledged child.	Lineal ancestor, \$3,000; others, \$10,000.	1½%	2½%	3%	3½%	4½%
Brother or sister, their descendants, son-in-law, daughter-in-law.	\$1,000	3%	4½%	6%	7½%	9%
Uncles, aunts or their descendants.	\$250	4%	6%	8%	10%	12%
Public hospitals, academy, college, university, seminary of learning, church or institution for public charity.	\$2,500	2%	3%	4%	5%	6%
All others	\$100	5%	7½%	10%	12½%	15%

LAWS OF 1911, CHAPTER 209, AS AMENDED BY LAWS 1913, CHAPTERS 455, 574 AND 565.

Section 1. A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed; or any interest therein, or income therefrom in trust or otherwise, to any person, association or corporation, except county, town or municipal corporation within the state, for strictly county, town or municipal purposes, in the following cases:

(1) When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.

(2) When a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a non-resident of the state at the time of his death.

(3) When the transfer is of property made by a resident or by a non-resident when such non-resident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

(4) Such tax shall be imposed when any such person or corporation become beneficially entitled, in possession or expectancy to any property or the income thereof, by any such transfer whether made before or after the passage of this act.

(5) Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the

passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

§ 2. The tax so imposed shall be computed upon the true and full value in money of such property at the rates hereinafter prescribed and only upon the excess of the exemptions hereinafter granted.

§§ 2a, b. Prescribes the rates and exemptions of the foregoing table.

§ 3. Provides that the tax accrues at death, is payable within one year, and for the valuation of life estates and remainders by the commissioner of insurance on mortality tables reckoned on the 5 per cent basis.

Where property is devised in court it shall be valued as if received by the beneficiaries directly.

The section further provides:

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting.

When property is transferred in trust or otherwise, and the rights, interest or estates of the transferee are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this act, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as if the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this article, with interest thereon at the rate of three per centum per annum from the time of payment. Such return of overpayment shall be made in the manner provided by section 21-c (section 9 of this act).

In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent incumbrance thereon, nor on account of any contingency upon the happening of which the estate or property, or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary or in the event of the abridgment, defeat or diminution of said estate or property, or interest therein, as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section 21-c (section 9 of this act).

Where any property shall, after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corpo-

ration beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

The tax on any devise, bequest, legacy, gift or transfer limited, conditioned, dependent or determinable upon the happening of any contingency or future event, by reason of which the full and true value thereof cannot be ascertained as provided for by the provisions of this act at or before the time when the taxes become due and payable as hereinbefore provided, shall accrue and become due and payable when the person or corporation beneficially entitled thereto shall come into actual possession or enjoyment thereof.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

§ 4. Requires executors or administrators to deduct the tax or collect it from beneficiaries to whom he may deliver property unless the tax is paid..

§ 5. Provides for payment to county treasurer who gives a receipt which must be produced to entitle executor or administrator to final accounting.

§ 6. Makes the tax a lien and executors, administrators, trustees and beneficiaries personally liable.

§ 7. If tax not paid within one year 7 per cent interest charged from date of death, which may be reduced to 6 per cent in case of unavoidable delay.

§ 8. Gives power of sale to pay tax.

§ 9. Where legacy charged on real estate heir must deduct tax.

§ 10. Provides for refund of taxes erroneously paid if application made within three years.

§ 11. Provides that no transfer of stock or obligation within state by foreign executor or administrator shall be valid unless tax is paid. Such property can only be transferred on consent of attorney-general, who gives it only when tax has been paid or no tax is due. Such application must be made on affidavits giving copy of will and full information as to nature and value of the property, and on this information he may determine the amount of the tax or that none is due. If any corporation within the state makes transfer on its books of stock owned by a non-resident decedent without the consent of the attorney-general it is liable for the tax plus 10 per cent to be recovered in a civil action. Any person aggrieved by the finding of the attorney-general may appeal to the district court of Hennepin or Ramsey county from the order of which an appeal lies by either party to the supreme court.

§ 12. Forbids bond and safe deposit companies holding securities of decedent to deliver same without notice to county treasurer, who may examine them and require that delivery be deferred ten days. Failure to notify treasurer makes the institution liable for the tax.

§ 13. Provides for notice to county treasurer of all probate proceedings.

§§ 13 to 19. Provide for the appointment of appraiser's valuation report and rehearing by the probate court closely following the New York practice.

§ 20. Provides for the collection of delinquent taxes by the county attorney.

§ 21. Provides for the keeping of transfer tax records by the probate court.

§ 21 (a). Provides for compromise of uncertain or contingent tax claims by the attorney-general on consent of the state auditor.

§ 21 (b). Authorizes the attorney-general to cite any person believed to have information concerning taxable decedent's estate to appear before him and examine such person on oath.

§ 21 (c). Provides for proceedings to secure refund of taxes erroneously paid.

§ 21 (d). Provides for the payment of taxes collected by county treasurer to the state treasurer.

§ 21 (e and f). Provide a seal for the attorney-general and authorizes him to employ a transfer tax assistant.

Prior Statutes: L. 1905, ch. 288; L. 1909, Revised Statutes, sec. 1038. Other prior statutes were held unconstitutional.

MISSISSIPPI

Imposes no inheritance tax.

MISSOURI

Taxes all property of non-residents within the state.

TABLE OF RATES AND EXEMPTIONS UNDER ACT OF 1917, IN EFFECT JUNE 18

CLASS OR RELATIONSHIP	Amount of exemption	Above exemption to \$20,000	\$20,000 to \$40,000	\$40,000 to \$80,000	\$80,000 to \$200,000	\$200,000 to \$400,000	In excess of \$400,000
Husband or wife.....	\$15,000	.....	.....	.....	.....	.....	.....
Lineal ancestor, lineal descendant, adopted child or its descendant illegitimate child.	\$5,000	1%	2%	3%	4%	5%	6%
Brother, sister or their descendants, son-in-law, daughter-in-law.	\$500	3%	6%	9%	12%	15%	18%
Aunt, uncle or their descendants.	\$250	3%	6%	9%	12%	15%	18%
Brother or sister of grandparents or their descendants.	\$100	4%	8%	12%	16%	20%	24%
All others except exempt charities, etc.	If less than \$100 not taxed.	5%	10%	15%	20%	25%	30%
Municipal, charitable, educational or religious purposes within the State.	All exempt.						

As to estates of decedents dying prior to June 18, 1917, the statute in force (Revised Statutes 1909) taxed transfers to collaterals and strangers only, and the table of rates and exemptions under that act follows:

Parents, husband, wife, adopted child, and direct lineal descendants.	Exempt altogether.
Bequests for religious, charitable or religious purposes exclusively.	Exempt altogether.
All others.....	5% on all.

ACT OF 1917 IN EFFECT JUNE 18, 1917.

Section 1. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed or any interest therein or income therefrom, in trust or otherwise, to persons, institutions, associations, or corporations, not hereinafter exempted, in the following cases: When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state. When the transfer is by will, or intestate law of property within the state or within the jurisdiction of the state and decedent was a non-resident of the state at the time of his death. When the transfer is made by a resident or by a non-resident when such non-resident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift made in contemplation of the death of grantor, vendor or donor, or intending to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift made within two years prior to the death of grantor, vendor, or donor, of a material part of his estate or in the nature of a final disposition or distribution thereof without

an adequate valuable consideration shall be construed to have been made in contemplation of death within the meaning of this section. Such tax shall be imposed when any person, association, institution or corporation actually comes into the possession and enjoyment of the property, interest therein, or income therefrom, whether the transfer thereof is made before or after the passage of this act; provided, that property which is actually vested in such persons or corporations before this act takes effect shall not be subject to the tax.

§ 2. Whenever any person or corporation shall exercise the power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which said appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by the donor by will; and whenever any person or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power relates had succeeded thereto by a will of the donee of the power failing to exercise such power taking effect at the time of such omission or failure. The tax so imposed shall be determined by the clear market value of such property at the rate hereinafter prescribed and only upon the excess over the exemptions hereinafter made.

§§ 3 and 4. Prescribe the rates and exemptions of the foregoing table.

§ 5. Provides for the valuation of life estates and remainders and the immediate taxation of the latter unless the remainderman elects to file a bond in three times the amount of the tax with an inventory of the property and shall renew the same every five years.

§ 6. Makes tax due at death, no interest for six months, after that 6 per cent from date of death. If not paid in one year executor or administrator must file a bond. Requires the executor to deduct the tax from a money legacy or if in property to collect it from the beneficiary, and forbids delivery without payment of the tax.

It imposes the same duty on the heir when a legacy is charged on the real estate, makes it a lien, and provides for its enforcement in the same manner as the legacy.

§ 7. Makes executors and administrators personally liable and gives them power of sale in the same manner as to pay debts.

§ 8. Provides for receipts which must be produced to entitle the executor or administrator to final accounting.

§ 9. Taxes bequests to executors in lieu of commissions when in excess of reasonable compensation.

§ 10. Provides for a proportionate refund when debts have been proved against the estate after distribution.

§ 11. If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligation in this state standing in the name of the decedent or in trust for a decedent liable for any such tax, the tax shall be paid to the state treasurer on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who is a resident or non-resident, or belonging to or standing in the joint names of such a decedent and one or more persons, including the shares or capital stock or other interest in a safe deposit company, trust company, corporation, bank or other institution making a delivery or transfer herein provided, shall deliver or transfer the same to the executor, administrator, or legal representatives of said decedent or the survivor or survivors when in the joint name of a decedent and one or more persons or upon their order or request unless notice of the time and place of such intended delivery or transfer be served upon the state treasurer and attorney-general at least ten days prior to said delivery or transfer; nor

shall any safe deposit company, trust company, corporation, bank or other institution, person or persons, deliver or transfer any securities, deposits, or other assets belonging to or standing in the name of decedent or belong to or standing in the joint names of a decedent and one or more persons, including the shares of capital stock of or any other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits, or other assets, including the shares of capital stock or other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer under the provisions of this article unless the state treasurer and the attorney-general consent thereto in writing. And it shall be lawful for the state treasurer, together with the attorney-general, personally or by representative, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination or failure to retain a sufficient portion or amount to pay such tax or interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits, or other assets, including the charges of capital stock of, or other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto a penalty of one thousand dollars; and the payment of such tax and interest thereon or the penalty above prescribed or both may be enforced in an action brought by the state treasurer in any court of competent jurisdiction.

§ 12. Provides for refunds of taxes erroneously paid when the application is made within two years of such payment.

§ 13. Gives the probate court granting letters jurisdiction of the tax proceedings and for the appointment of an appraiser by the judge on his own motion or on the application of the estate or state officers.

§§ 14 to 23. Provide for proceedings before appraisers, appeals and proceedings to fix the tax where no administration proceedings are pending, and for the valuation of life estates and remainders by the superintendent of insurance on the 5 per cent basis, using actuaries' combined experience tables of mortality.

§ 24. In determining the value of any estate, property, interest therein or income therefrom to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled, no allowance shall be made on account of any contingent encumbrance thereon, nor on account of any contingency upon the happening of which the estate, property, interest or income or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such encumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall be made to the persons properly entitled thereto of a proportionate part of such tax on account of the encumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section 12 thereof upon order of the court having jurisdiction.

§ 25. Where any property shall after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estate or interests is derived. When the property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are wholly

dependable upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith by the executor, administrator, or trustee out of the property transferred; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this act, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this act. Such return of overpayment shall be made in the manner provided by section 12 of this act, upon the order of the court having jurisdiction. Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estate for purposes of taxation, upon which said estates in expectancy may have been limited. Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

§ 26. Actions may be brought against the state for the purpose of quieting the title to any property, against the lien or claim of lien of any tax or taxes under this act, or for the purpose of having it determined that any property is not subject to any lien for taxes under this act. In any such action, the plaintiffs may be any administrator, or executor of the estate or will of any decedent whether the said estate shall have been fully administered and the estate settled and closed or not, and any heir, legatee, devisee of any such decedent, or trustee of the estate or of any part of the estate of such decedent, or distributee of the estate or of any part of the estate of any such decedent, and any assignee, grantee or successor in interest of any such persons, and all or any other persons who might be made parties defendant in any action brought by the state under the provisions of this section, and notwithstanding that all or any of the persons enumerated in this section shall or may have assigned, granted, conveyed or otherwise parted with all or any interest in or title to the property, or any part thereof, involved in any such claim or lien before the commencement of such act. All or any of the persons in this action enumerated may be joined or united as parties plaintiff. The enumeration in this section of the parties who may be made parties shall not be deemed to be exclusive, but the joinder or non-joinder of parties except when otherwise herein provided, shall be governed by the rules in equity in similar cases. In all cases any person who might properly be a party plaintiff in any such action who refuses to join as plaintiff may be made a defendant. All actions under this section shall be commenced in the circuit court of the county in which is situated any part of any real property against which any lien is sought to be enforced, or to which title is sought to be quieted against any lien, or claim of lien; but if in said action no lien against real property is sought to be enforced, the action shall be brought in the circuit court of the county which has or which had jurisdiction of the administration of the estate of the decedent mentioned herein. Service of summons in the actions brought against the state shall be made on the state treasurer and the prosecuting attorney of the county, and it shall be the duty of said prosecuting attorney to defend for the state. The procedure and practice in all actions brought under this section, except as otherwise provided in this act, shall be governed by the provisions of the Code of Civil Procedure in relation to civil actions, so far as the same shall or may be applicable, including all provisions relating to motions for new trials and appeals. The remedies provided in this section shall be in addition to and not exclusive of any remedies provided in the sections preceding this section.

§§ 27, 28 and 29. Provide for reports by state officers and impose a penalty for neglect of duty in failing to enforce the statute.

§ 30. When any property, benefit or income shall pass to or for the use of any hospital, religious, educational, Bible, missionary, scientific, benevolent or charitable purpose in this state, or to any trustee, association or corporation, bishop, minister of any church, or religious denomination in this state, to be held and used and actually held and used exclusively for religious, educational or charitable uses and purposes, the same shall not be subject to any tax, but this provision shall not apply to any corporation which has a right to make dividends or distribute profits or assets among its members, except when the property is transferred to any of the above named parties in the first instance; the intent being to exclude and exempt from the tax herein provided for, all property held by any person or persons as the trustee or other legal representative of any religious, charitable, scientific, or educational institutions, society or corporation, when by death the title to property passes by the right of succession to other persons as trustee or legal representatives of such institutions, societies or corporations.

§ 31. When property or any interest therein or income therefrom shall pass to or for the use of any person, institution, association or corporation by the death of another by deed, instrument or memoranda or by any transfer or passage whatsoever and such transfer shall be deemed a transfer within the meaning of this act and taxable at the same rates and be appraised in the same manner and subjected to the same duties and liabilities as any other form of transfer provided in this act.

§ 32. Makes the usual definitions as to estate and property.

§ 33. Repeals the former statutes with the usual saving clause as to the rights of the state to taxes already accrued.

MONTANA

Taxes property of non-residents within the state except real estate of lineal descendants, and near relatives.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Exemption	Rate of tax
Father, mother, husband, wife, lawful issue, sister, brother, son-in-law, daughter-in-law, adopted or mutually acknowledged child, lineal descendants, born in wedlock.	Estate valued at less than \$7,500, no tax.	1% on entire value of personal property, if over \$7,500 in value.
All others.....	Estate valued at less than \$500, not taxed.	5% on all, if estate over \$500.

REVISED CODES OF MONTANA OF 1907, AS AMENDED BY CHAPTER 40, LAWS OF 1917.

§ 7724. After the passage of this act, all property which shall pass by will or by the intestate laws of this state, from any person who may die, seized or possessed of the same, while a resident of this state, or if such decedent was not a resident of this state, at the time of his death, which property or any part thereof, shall be within this state, or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor, or intended to take effect in possession or enjoyment after such death to any person or persons, or to any body politic corporate, in trust or otherwise, or any property, which shall be in this state or the proceeds of all property outside of this state, which may come into this state, and which may be or should be distributed in this state to any such heirs, devisees or legatees, by reason whereof any person

or corporation shall become beneficially entitled in possession or expectancy, to any such property, or to the income thereof.

The section then fixes the rates and exemptions shown above, makes executors and administrators personally liable until the tax is paid, and concludes as follows:

"Provided, further, that said tax shall be levied and collected upon the increase of all property arising between the date of death and the date of the decree of distribution, and upon all estates which have been probated before, and shall be distributed after the passage and taking effect of this act."

NOTE.—(a) A serious typographical error which has misled text writers is corrected in a re-publication of above section in Montana Revised Codes of 1915, Vol. 3, p. 781.

(b) The unique provision taxing increase during administration is construed to include increase in value as well as in kind.

Matter of Tuohy, 35 Mont. 431.

§ 7725. Provides that if remaindermen elect to defer payment until they get the property they may within one year file a bond in twice the amount of the tax with an inventory of the property to pay it with interest at 10 per cent, and must renew the bond every three years.

§ 7726. Taxes excess over reasonable fees of bequest to executors in lieu of commissions.

§ 7727. Makes taxes due at death. If paid within six months allows discount of 3 per cent. Charges interest at 10 per cent after ten months, and requires executors or administrators to file a bond for payment.

§ 7728. In case of unavoidable delay no interest for eighteen months and then at 7 per cent.

§ 7729. Requires the executor or administrator to deduct the tax from money legacy or collect it from the legatee; must not deliver property unless the tax is paid.

§ 7730. Gives power of sale to pay tax as in case of debts.

§ 7731. Provides for receipts which must be produced on accounting to procure discharge.

§ 7732. Makes the bond of executors or administrators liable for the tax.

§ 7733. Executor or administrator may be removed and his bond held in case of failure to pay tax.

§ 7734. Makes administrators *de bonis non* liable in the same way as other administrators.

§ 7735. Provides for proportionate refund where debts have been proved after distribution.

§ 7737. Foreign executors. Tax on stocks or loans. Whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this state, standing in the name of the decedent, or held in trust for a decedent, which shall be liable to the said tax, such tax shall be paid to the treasurer of the proper county on the transfer thereof; otherwise, the corporation permitting such transfer shall become liable to pay such tax; provided that such corporation had actual or constructive knowledge before such transfer that said stocks or loans are liable to said tax.

The other sections provide for the appraisal of the estate, appeal, rehearing and delinquent collections, substantially following the New York practice.

Life estates and remainders are computed on mortality tables on a basis of 7 per cent.

THE 1917 AMENDMENT.

Chapter 40, L. 1917, reads as follows:

“§ 7731. Every sum of money retained by an executor, administrator, or trustee, or paid into his hands for any tax on property shall be placed in a separate account and within ten days thereafter, he shall obtain an order of the court before whom the probate proceedings are pending, setting forth the county whereof decedent was a resident at the time of his death and showing the county or counties wherein the real property of decedent is situate, together with the amount thereof and the value of the same, as given by the appraisers of decedent's estate, and ordering such executor, administrator, or

trustee, to pay unto the several county treasurers of such county or counties such sum or sums so set aside in the following proportion:

"First. To the county treasurer of the county whereof decedent was a resident at the time of his death the whole amount of the tax due on the personal property of said decedent.

"Second. To each county treasurer of the counties wherein decedent owned real property, the tax due on the amount of property situate in such county according to the valuation set upon the same by the appraisers of decedent's estate; immediately after obtaining the aforesaid order such executor, administrator, or trustee shall pay to the county treasurer or treasurers named therein the sum or sums specified in such order, and the payment of said tax to every county treasurer shall be accompanied by a certified copy of such order, and the said county treasurer or treasurers shall give, and every executor, administrator, or trustee shall take duplicate receipts for such payment, one of which said receipts said executor, administrator or trustee shall immediately send to the treasurer of the state whose duty it shall be to charge the county treasurer so receiving the tax with the amount thereof due the state, and state treasurer shall seal said receipt with the seal of his office, if he have one, and countersign the same, and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; and an executor, administrator or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed unless he shall produce a receipt so sealed and countersigned by the state treasurer, or a copy thereof certified by him."

§ 2. This act shall apply to all estates remaining undistributed at the time this law shall take effect and the tax shall be determined and collected as in other cases.

§ 3. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, as far as they effect the provisions hereof.

§ 4. This act shall take effect and be in force from and after its passage and approval by the Governor.

NEBRASKA

Taxes property of non-residents within the state.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount exempt	Rates				
Father, mother, husband, wife, child, brother, sister, daughter-in-law, son-in-law, adopted or mutually acknowledged child, lineal descendant.	\$10,000	1% on all above exemption.				
Aunt, uncle, niece, nephew, or their lineal descendants.	\$2,000	2% on all in excess of exemption.				
	Less than \$500, no tax	On all up to \$5,000	\$5,000 to \$10,000	\$10,000 to \$20,000	\$20,000 to \$50,000	In excess of \$50,000
All others.....	.....	2%	3%	4%	5%	6%

REVISED STATUTES OF 1913, AS AMENDED BY CHAPTER 113, LAWS OF 1915.

§ 6622. All property, real, personal and mixed which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state, or, if decedent was not a

resident of this state at the time of his death, which property or any part thereof shall be within this state, or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor, or bargainor, or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason thereof any person or body corporate shall become beneficially entitled in possession or expectation to any property or income thereof, shall be and is subject to a tax, at the rate herein-after specified to be paid to the treasurer of the proper county for the use of the state and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed.

The rest of the section prescribes the rates and exemptions as shown in the foregoing table.

§ 6624. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of 7 per cent per annum shall be charged and collected therefrom for such time as such taxes are not paid; provided, that if said tax is paid within one year from the accruing thereof, interest shall not be charged or collected thereon, and in all cases where the executors and administrators or trustees do not pay such tax within one year from the death of the decedent they shall be required to give a bond in the form and to the effect prescribed in section 2 of this act, for the payment of said tax together with interest.

§ 6625. Requires the executor or administrator to deduct the tax from money or collect it from beneficiary in case of property, which must not be delivered unless the tax is paid. Requires the heir to deduct the tax before paying a legacy charged on real estate. When property is given for a limited period the court apportions the tax.

§ 6626. Gives power of sale for payment of tax in the same way as in case of debts.

§ 6627. Provides for receipts which must be produced on final accounting.

§ 6628. Whenever any of the real estate of which any decedent may die seized shall pass to any body corporate or to any person or persons or in trust for them or some of them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof, in writing, to the treasurer of the county where said real estate is situated, within six months after they undertake the execution of their expected duties, or if the facts be not known within that period, then within one month after the same shall have come to their knowledge.

§ 6629. Whenever debts shall be proved against the estate of the deceased after distribution of legacies from which the inheritance tax had been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be paid to him by the executor or administrator; if the said tax has not been paid into the county treasury or by the county treasurer if it has been so paid.

§ 6630. Whenever any foreign executors or administrators shall assign or transfer any stocks or loans in this state standing in the name of the decedent, or in trust for a decedent which shall be liable to the said tax, such tax shall be paid to the treasury or treasurer of the proper county on the transfer thereof; otherwise the corporation making such transfer shall become liable to pay such taxes, provided that such corporation has knowledge before such transfer that said stocks or loans are liable for such taxes.

§ 6631. When any amount of the said tax shall have been paid erroneously to the county treasurer it shall be lawful for him, on satisfactory proof rendered to him of said erroneous payment, to refund and pay to the executor, administrator or trustee, person or persons who have paid any such tax in error, the amount of such tax so paid provided that all applications for the repayment of the said tax shall be made within two years of the date of said payment.

The rest of the statute, sections 6632 to 6641, makes the usual provisions for appointment of appraisers, valuation, appeal and reports of state officers.

Under the 1915 amendment to section 6632 the county court is empowered to make an order on proper proof that the estate is not subject to any tax, thus avoiding unnecessary appraisal of small estates, following the New York practice.

Prior Statutes: L. 1901, ch. 54; L. 1905, ch. 117; L. 1907, chs. 103 and 104, L. 1911, ch. 107.

NEVADA

Taxes all property of non-residents within the state.

TABLE OF GRADED RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount of exemption	Graded rates				
		Above exemption up to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child.	\$20,000 to widow or minor child; others, \$10,000.	1%	2%	3%	4%	5%
Brother or sister of decedent and their descendants, son-in-law, daughter-in-law.	\$10,000	2%	4%	6%	8%	10%
Aunt or uncle of their descendants.	\$5,000	3%	6%	9%	12%	15%
Brother or sister of grandparents and their descendants.	None	4%	8%	12%	16%	20%
All others.	None	5%	10%	15%	20%	25%

LAWS OF 1913, CHAPTER 266. BECAME A LAW MARCH 26, 1913.

Section 1. A tax shall be and is hereby imposed upon the transfer of any and all property within the jurisdiction of this state, and any interest therein or income therefrom, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, not hereinafter exempted, which shall pass in trust or otherwise by will or by the statutes of inheritance of this or any other state or by deed, grant, sale or gift made without valuable and adequate consideration in contemplation of the death of the grantor, vendor, assignor or donor or intended to take effect in possession or enjoyment at or after such death, as specified in this act. For the purposes of this act, the ownership of shares of stock in a corporation owning property in this state shall be considered as the ownership of such interest in the property so owned by such corporation, as the number of shares so owned shall bear to the entire issued and outstanding capital stock of such corporation; and notes and other evidences of indebtedness secured by mortgage on real estate situated in this state are and shall be, upon the owner's death, subject to the inheritance tax hereinafter provided.

§§ 2, 3 and 4. Impose the rates and exemptions shown in the foregoing table.

§ 5. Provides that remaindermen may elect not to pay the tax until they get the property by filing an inventory and bond within one year in twice the amount of the tax and renewing the bond every five years.

§ 6. Taxes bequests to executors in lieu of commissions when in excess of reasonable compensation.

§ 7. Makes all taxes due at death. If paid within six months allows discount of 5 per cent. No interest until after eighteen months, then 10 per cent from date of death, and executor or administrator must file a bond.

§ 8. In case of unavoidable delay interest after eighteen months reduced to 7 per cent.

§ 9. Requires the executor or administrator to collect the tax from beneficiary or deduct it from money legacy or share.

§ 10. Gives power of sale to pay the tax and no final accounting allowed unless tax receipt is produced.

§ 11. Requires the executor or administrator to pay the tax, provides for receipts and duplicate copies thereof.

§ 12. Provides for proportionate refund of tax if debts are proved against estate after distribution.

§ 13. Gives jurisdiction of the tax proceedings to the district court in which the probate is pending.

§§ 14 to 23. Provide for the appointment of appraisers and the usual proceedings for the valuation of the estate and collection of the tax closely following the New York practice.

§ 24. Whenever any property belonging to a foreign estate which estate, in whole or in part, is liable to pay an inheritance tax in this state, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state; in the event that the executor, administrator or trustee of such foreign estate, files with the clerk of the court having ancillary jurisdiction, and with the state treasurer, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate.

§ 25. If a foreign administrator, executor or trustee shall assign or transfer any corporate stock or obligations in this state standing in the name of the decedent, or in trust for a decedent and liable to the tax herein provided, the tax must be paid to the county treasurer of the county in which such transfer is made before the transfer thereof; otherwise the corporation permitting its stock to be so transferred shall be liable to pay such tax, and it is the duty of the state controller and the district attorney of the proper county to enforce the payment thereof.

§§ 26-29. Provide for the collection of delinquent taxes.

§ 30. The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainer, vendor, or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the state. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described. The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainer, vendor, or donor.

The words "contemplation of death" as used in this act shall be taken to include that expectancy of death which actuates the mind of a person on the execution of his will, and in nowise shall said words be limited and restricted to that expectancy of death which actuates the mind of a person in making a gift *causa mortis*, and it is hereby declared to be the intent and purpose of this act to tax any and all transfers which are made in lieu of or to avoid the passing of the property transferred by testate or intestate laws.

§ 31. This act shall take effect thirty days from and after the date of its approval.

Prior Statutes: None prior to above act.

NEW HAMPSHIRE

Taxes only collaterals and strangers and when they are non-residents only real property within the state, since April 7, 1915.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount exempt	Rates
Father, mother, husband, wife, brother, sister, lineal descendant, adopted child, the lineal descendant of any adopted child, the wife or widow of a son, or the husband of a daughter, of a decedent, or to or for the use of educational, religious, cemetery, or other institution, societies, or associations of public charity in this state, or for or upon trust for any charitable purpose in the state, or for the care of cemetery lots, or to a city or town in this state for public purposes.	Wholly exempt.....	No tax.
All others when nonresidents.....	On real estate within the State.....	5%
All others when residents.....	5% on all.	

LAWS OF 1905, CHAPTER 40, AS AMENDED BY LAWS OF 1907, CHAPTER 68; LAWS OF 1911, CHAPTER 42; LAWS OF 1913, CHAPTER 202; LAWS OF 1915, CHAPTER 106 AND CHAPTER 116.

Section 1. All property within the jurisdiction of the state, real or personal, and any interest therein, belonging to inhabitants of the state, and all real estate within the state, or any interest therein, belonging to persons who are not inhabitants of the state, which shall pass by will, or by the laws regulating intestate succession, or by deed, grant, bargain, sale, or gift, made in contemplation of death, or made or intended to take effect in possession or enjoyment at or after the death of the grantor or donor, to any person, absolutely or in trust.

The section then prescribes the rates and exemptions of the foregoing table and concludes: administrators, executors, and trustees, and any such grantees under a conveyance made during the grantor's life, shall be liable for such taxes, with interest, until the same have been paid. An institution or society shall be deemed to be in this state, within the meaning of this act, when its sole object and purpose is to carry on charitable, religious, or educational work within the state, but not otherwise.

§ 2. Provides for the computation of life estates on mortality tables on the 4-per cent. basis. Contingent remainders are presently taxed against the legacy but if they ultimately pass to an exempt class application for a refund with interest at 3 per cent. may be made within one year.

§ 3. Taxes bequests to executors in lieu of commissions in excess of reasonable compensation.

§ 4. Makes taxes due two years from giving bonds by executors or administrators after that 10 per cent. and tax is made a lien on the property until paid.

§ 5. Requires executors or administrators to deduct the tax or collect it from beneficiaries and gives them power of sale.

The section provides further:

When a conveyance made by a decedent in his lifetime is subject to said tax, and the property thus conveyed, being personal property is without the state, or is removed from the state before the tax is paid, such tax shall become a lien upon all the property of the decedent and shall be chargeable as an expense of administration; and the executor or administrator shall collect taxes due on account of such conveyances and may be authorized to sell any property subject to the lien of such tax, for the payment thereof, as in other cases.

§ 6. Requires the heir to deduct the tax before paying legacy charged on real estate, makes the tax a lien until paid and payment may be enforced in the same way as payment of the legacy.

§§ 7, 8. Give power of sale of property and real estate to pay the tax if not paid by beneficiaries when due.

§ 9. Requires the executor or administrator within three months of appointment to file an inventory and appraisal with a penalty of \$1,000 for neglect or refusal and removal from office.

§ 10. Requires the register of probate to send copies of the inventory and of the will to the state treasurer.

§ 11. Requires the executor or administrator to notify the state treasurer of any real estate passing so as to be liable to the tax.

§ 12. Requires the state treasurer to determine the amount of the tax and provides further: The amount due upon the claim of any creditor against the estate of a deceased person arising under a contract made after the passage of this act, if payable by the terms of such contract at or after the death of the deceased shall be subject to the same tax imposed by this chapter upon a legacy of like amount. The value of legacies or distributive shares in the estates of deceased persons for the purpose of the legacy or succession tax shall not be diminished by reason of any claim against the estate based upon such a contract in favor of the persons entitled to such legacies or distributive shares, except in so far as it may be shown affirmatively by competent evidence that such claim was legally due and payable in the lifetime of the decedent. Payment of the amount so certified shall be a discharge of the tax. An executor, administrator, trustee or grantee, who is aggrieved by any such determination of the state treasurer and who pays the tax assessed without appeal, may, within one year after the payment of such tax to the treasurer, but not afterwards, apply to the probate court having jurisdiction of the estate of the decedent for the abatement of said tax or any part thereof, and if the court adjudges that said tax or any part thereof was wrongfully exacted it shall order an abatement of such portion of said tax as was assessed without authority of law, which said order or decree shall be subject to appeal as in other cases. Upon a final decision ordering an abatement of any portion of said tax, the state treasurer shall repay the amount adjudged to have been illegally exacted without any further act or resolve making appropriation therefor. Whenever a specific bequest of household furniture, wearing apparel, personal ornaments, or similar articles of small value is subject to a tax under the provisions of this act, the state treasurer in his discretion may abate such tax if in his opinion the tax is not of sufficient amount to justify the labor and expense of its collection.

§ 13. Provides for the appointment of appraisers by state treasurer if the estate fails to make one or he is dissatisfied with that made, for reappraisal on application to the probate court and for appeal.

§ 14. Gives right of appeal to the probate court to the executor or administrator if dissatisfied with finding of the state treasurer.

§ 15. The state treasurer may apply for administration of an estate liable to tax if no proceedings for probate or administration are begun within four months of death.

§ 16. Executor or administrator must show that the tax has been paid or that none is due before being entitled to final accounting.

§ 17. Authorizes the state treasurer to require the production of books and papers.

§ 18. When real estate within the state, or any interest therein, belonging to a person who is not an inhabitant of the state, shall pass by will or otherwise so that it may be subject to tax under the provisions of section 1, and an executor or administrator of the estate of said decedent is appointed by a probate court of this state upon ancillary proceedings, or otherwise, such executor or administrator shall, for the purposes of this act, have the same powers and be subject to the same duties and liabilities with reference to such real estate as though the decedent had been a resident of this state; but the provisions of this act, in so far as they refer to personal property, shall not apply to such executor or administrator.

§ 19. In the absence of administration in this state upon the estate of a non-resident, the state treasurer may, at the request of an executor or administrator duly appointed and qualified in the state of the decedent's domicile, or of a grantee under a conveyance made during the grantor's lifetime, and upon satisfactory evidence furnished him by such executor, administrator, or grantee, or otherwise, determine whether or not any real estate of said decedent within this state is subject to tax under the provisions of this act, and if so, may determine the amount of such tax and adjust the same with such executor, administrator, or grantee, and for that purpose may appoint an appraiser to appraise said property as provided in section 13, and the expense of such appraisal shall be a charge upon said real estate in addition to the tax. The treasurer's certificate as to the amount of such tax and his receipt for the amount therein certified may be filed in the probate office in the county where the real estate is located, and when so filed shall be conclusive evidence of the payment of the tax, to the extent of such certification; as provided in section 16. Whenever in such a case the tax is not adjusted within four months after the death of the decedent, the proper probate court, upon application of the state treasurer, shall appoint an administrator in this state as provided in section 15.

§ 20. The state treasurer shall be entitled to appear in any proceeding in any court in which the decree may in any way affect the tax; and no decree in any such proceeding, or upon appeal therefrom, shall be binding upon the state unless personal notice of such proceeding shall have been given to the state treasurer.

§ 21. Requires books and blanks to be furnished by the state treasurer.

NOTE.—Prior to the 1915 amendment all personal property of non-residents collaterals and strangers within the State was also subject to the tax.

NEW JERSEY

As to non-residents taxes real property, goods, wares and merchandise within the state, stock in New Jersey corporations, and of national banking associations, located within the state.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount of exemption	In excess of \$5,000 to \$50,000	\$50,000 to \$150,000	\$150,000 to \$250,000	In excess of \$250,000
Husband, wife, child, lineal issue, adopted or mutually acknowledged child and its issue.	\$5,000	1%	1½%	2%	3%
Father, mother, brother, sister, daughter-in-law, son-in-law.	\$5,000	2%	2½%	3%	4%
Churches, hospitals, orphan asylums, public libraries, Bible and tract societies, religious, benevolent and charitable institutions operating solely within the State or organized under its laws.	All exempt	No tax			
All others.....	\$500	5% on all in excess of exemption.			

CHAPTER 228, LAWS OF 1909, AS AMENDED BY CHAPTER 28, LAWS OF 1910; CHAPTER 226, LAWS OF 1912; CHAPTER 151, LAWS OF 1914, AND CHAPTER 58, LAWS OF 1914.

Section 1. A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, except as hereinafter provided, in the following cases:

First. When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of the state.

Second. When the transfer is by will or intestate law, of real property within this state, or of goods, wares and merchandise within this state, or of shares of stock of corporations of this state, or of national banking associations located in this state, and the decedent was a non-resident of the state at the time of his death.

Third. When the transfer is of property made by a resident, or is of real property within this state, or of goods, wares and merchandise within this state, or of shares of stock of corporations of this state or of national banking associations located in this state, made by a non-resident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect, in possession or enjoyment at or after such death.

Fourth. When any person or corporation comes into the possession or enjoyment, by a transfer from a resident or from a non-resident decedent, when such non-resident decedent's property consists of real property within this state or of shares of stock of corporations of this state or of national banking associations located in this state, of an estate in expectancy of any kind or character which is contingent or defeasible, transferred by an instrument taking effect after the passage of this act, or of any property transferred pursuant to a power of appointment contained in any instrument taking effect after the passage of this act.

All taxes imposed by this act shall be at the rate of 5 per centum upon the clear market value of such property, except as hereinafter provided; to be paid to the treasurer of the state of New Jersey, for the use of said state, and all administrators, executors, trustees, grantees, donees or vendees, shall be personally liable for any and all such taxes until the same shall have been paid as hereinafter directed, for which an action of debt shall lie in the name of the state of New Jersey.

The rest of the section prescribes the rates and exemptions as given in the foregoing table.

§ 2. When any person shall bequeath or devise, convey, grant, sell or give any property or interest therein, or income therefrom, to any person or corporation for life or for a term of years, and a vested interest in the remainder or corpus of said property to any person, or to anybody politic or corporate, the whole of said property, so transferred as aforesaid, shall be appraised immediately at its clear market value, and after deducting from such appraisal the value of the estate for life or estate for a term of years, the tax on such life estate or for a term of years, if taxable under this act, shall be immediately levied and assessed, and the tax on the remainder of the property so as aforesaid transferred, if such property is taxable under this act, shall be levied and assessed immediately, but such tax shall not become due or payable until the time or period arrives when said remainderman, or his representatives, shall become entitled to the actual possession or enjoyment of such property, and shall then become due and payable immediately, and, if not paid within thirty days, interest at the rate of ten per centum per annum shall be charged and collected from the time when said tax became due and payable. If the property passing to a remainderman, as hereinabove provided, be personal property, such remainderman, or the executor or trustee of the estate, shall give a bond to the state of New Jersey in double the amount of the tax on the property of such remainderman, conditioned to pay said tax, and any interest which may fall due thereon, said bond to be approved as to the form and sufficiency thereof by the attorney-general of this state, and any executor or trustee who shall assign or deliver to any such remainderman any personal property liable to a tax under this act, unless a bond be given as specified in this section, or said tax be paid, shall be personally liable for said tax and all interest due thereon, which liability may be enforced in an action of debt in the name of the state of New Jersey.

§ 3. Where an instrument creates an executory devise, or an estate in expectancy of any kind or character which is contingent or defeasible, the

property transferred in accordance with such executory devise or the property in which such contingent or defeasible interest is created by any such instrument, shall be appraised immediately at its clear market value, and after deducting from such appraisement the value of the life estate or estate for a term of years, created by such instrument, the tax on such life estate or estate for a term of years, if taxable under this act, shall be immediately levied and assessed, but the tax on the balance of said appraised value of such estate shall not be levied or assessed until the person or corporation entitled to said property comes into the beneficial enjoyment, seizin or possession thereof, and if taxable, shall then be taxed. Where an instrument creates a power of appointment, the life estate, or estate for a term of years, created and transferred by such instrument, if taxable, shall be immediately appraised and taxed at its clear market value, but the appraisal and taxation of the interest or interests in remainder to be disposed of by the donee of power shall be suspended until the exercise of the power of appointment, and shall then be taxed, if taxable, at the clear market value of such property, which value of such property shall be determined as of the date of the death of the creator of the power.

A tax on an estate for life or on an estate for a term of years, levied and assessed as directed in this section, shall be due and payable as provided in section five of this act. All other taxes levied and assessed as directed in this section and all taxes on any property which may be transferred to the residuary legatees, heir or next of kin of any decedent, or which may revert to the heir of any decedent by reason of the failure of any contingency upon which any remainder may be limited, shall be due and payable within two months after the person entitled to the property shall come into the enjoyment, seizin or possession thereof, and if not paid shall thenceforth bear interest at the rate of ten per centum per annum until paid. No executor or trustee shall turn over any property of an estate mentioned in this section until the tax due thereon, and interest, if any, shall have been paid to the treasurer of this state, and any executor or trustee who shall turn over any property prior to the payment of the tax due thereon, together with interest, shall be personally liable for such tax and interest, which said liability may be enforced by an action of debt in the name of the state of New Jersey.

The comptroller of the treasury of this state, by and with the consent of the attorney-general, expressed in writing, is hereby empowered and authorized to enter into an agreement with the executors or trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and circumstanced that the taxes therein were held not presently payable, or where the interest of the legatees or devisees were not ascertainable at the death of the testator, grantor, donor or vendor, and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said executors and trustees upon the payment of the taxes provided for in such composition; *provided, however*, that no such composition shall be conclusive in favor of said executors or trustees as against the interest of such *cestuis que trust* as may possess either present rights of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian or committee.

§ 4. Taxes bequest to executors in lieu of commissions where in excess of reasonable compensation to be fixed by orphan's court having jurisdiction.

§ 5. Makes taxes due at death. If paid within six months gives discount of 5 per cent. After one year 10 per cent. interest charged and executors or administrators must give bond for payment—makes tax a lien on real estate until paid.

§ 6. In case of unavoidable delay only 6 per cent. interest is charged from end of year.

§ 7. Requires the executor or administrator to deduct the tax or collect it from beneficiary and may not deliver property until the tax is paid. Then heir must deduct the tax before paying a legacy charged on real estate and

the tax may be enforced against him in the same way as the legacy. If bequest is in property for a limited period court must make an apportionment of the tax due from the different legatees.

§ 8. Gives power of sale to pay the tax in the same manner as in case of debts.

§ 9. Provides for receipts which must be produced as vouchers on final accounting and for duplicate receipts as to real estate to be recorded.

§ 12. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or standing in the joint names of such decedent and one or more persons, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of this state on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits or other assets belonging to or standing in the name of a decedent who was a resident, or belonging to or standing in the joint names of such a resident decedent and one or more persons, including the shares of the capital stock of, or other interests in, safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the comptroller of the treasury of this state at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a resident decedent, or belonging to or standing in the joint names of a resident decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits, shares of stock, or other assets, including the shares of capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution, making the delivery or transfer, under the provisions of this act, unless the comptroller of the treasury consents thereto in writing. And it shall be lawful for the said comptroller of the treasury, either personally or by representative, to examine said securities, deposits or assets of a resident decedent, at the time of such delivery and transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits, shares of stock, or other assets, including the shares of capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto a penalty of one thousand dollars; which liability for such tax and interest, or the penalty above described, or both, shall be enforced in an action of debt in the name of the state of New Jersey, and the same, when recovered, shall be paid into the treasury of the state of New Jersey, for the use of the state.

No corporation of this state shall transfer any stock of said corporation standing in the name of or belonging to a decedent, resident or non-resident, or in the joint names of a decedent and one or more persons, or in trust for a decedent, unless notice of the time of such intended transfer be served upon the comptroller of the treasury of this state at least ten days prior to such transfer, nor until said comptroller shall consent thereto in writing. Any corporation making such a transfer without first obtaining the consent of the comptroller of the treasury as aforesaid shall be liable for the amount of any tax which may thereafter be assessed on account of the transfer of such stock,

together with the interest thereon, and in addition thereto a penalty of one thousand dollars, which liability for such tax and interest and the said penalty prescribed may be enforced in an action of debt in the name of the state of New Jersey, said penalty, when recovered, to be paid into the treasury of the state of New Jersey.

A tax shall be assessed on the transfer of property made subject to tax as aforesaid, in this state of a non-resident decedent if all or any part of the estate of such decedent, wherever situated, shall pass to persons or corporations taxable under this act, which tax shall bear the same ratio to the entire tax which the said estate would have been subject to under this act if such non-resident decedent had been a resident of this state, and all his property, real and personal, had been located within this state, as such taxable property within this state bears to the entire estate, wherever situated; *provided*, that nothing in this clause contained shall apply to any specific bequest or devise of any property in this state.

§ 13. The comptroller of the treasury of this state, either personally or by any of his employees, may investigate the question of the liability of any property to any tax due prior to the passage of this act, and if said comptroller is satisfied that any taxes are due this state, he shall report such fact to the register of the prerogative court, or surrogate of the proper county, whereupon said register or surrogate shall cause said property to be taxed.

§ 14. Provides that life estates are to be computed by American experience tables on basis of 5 per cent.

§ 15. Provides for the refund of taxes erroneously paid if application made to comptroller of the treasury within two years.

§ 16. Requires the register of the prerogative court and all surrogates to notify the comptroller within ten days of all probate proceedings.

§ 17. Empowers the comptroller to examine all papers, documents and files in possession of private or public corporations or persons.

§ 18. Provides for the appointment of an appraiser, the valuation of the property and appeal on filing a bond to pay the tax.

§ 19. Provides compensation of appraisers and imposes a penalty for accepting fee or reward.

§ 20. Gives the ordinary of the state jurisdiction in all transfer tax matters.

§§ 21 and 25. Provide for the keeping of records and the collection of delinquent taxes.

§ 26. The words "estate" and "property," wherever used in this act, except where the subject or context is repugnant to such construction, shall be construed to mean the interest of the testator, intestate, grantor, bargainor or vendor, passing or transferred to the individual or specific legatee, devisee, heir, next of kin, grantee, donee or vendee, not exempt under the provisions of this act, whether such property be situated within or without this state. The word "transfer," as used in this act, shall be taken to include the passing of property, or any interest therein, in possession or enjoyment, present or future, by distribution by statute, descent, devise, bequest, grant, deed, bargain, sale or gift.

§ 27. Provides that if any section is held unconstitutional it shall not affect the rest of the act.

§ 28. Repeals prior acts with a saving clause as to prior taxes and remedies.

Amendment by chapter 58, L. 1914.

1. Whenever a foreign executor, administrator or trustee shall desire to transfer stock in a New Jersey corporation, owned by a non-resident decedent, it shall and may be lawful for the comptroller of the treasury of this state to issue a waiver for the transfer of said stock upon such foreign executor, administrator or trustee paying to the comptroller of the treasury a five per centum tax, based upon the full value of the said shares of stock or property. If after said transfer it shall be ascertained by the comptroller of the treasury that the said stock or property was not liable to said full five per centum tax, said comptroller of the treasury shall by his check pay to said executor, administrator or trustee the amount overpaid to the state comptroller. For

the purpose of carrying into effect the provisions of his act, the comptroller of the treasury is hereby expressly authorized to maintain a separate fund into which shall be paid the amount of taxes as aforesaid, and when the exact or precise tax which the stock or property in New Jersey is liable for shall have been ascertained, the comptroller of the treasury shall pay to the treasurer of the state of New Jersey, the amount of said tax so ascertained to be due.

Prior Statutes: L. 1892, ch. 122; L. 1893, ch. 210; L. 1894, ch. 210; L. 1898, ch. 62; L. 1902, ch. 217; L. 1903, ch. 90; L. 1906, chapters 227 and 228; L. 1908, ch. 131; L. 1909, chapters 156 and 209.

NEW MEXICO

Levies no inheritance tax.

NORTH CAROLINA

Taxes all property of non-residents within the state.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount of exemption	Graded rates				
		Above exemption to \$25,000	\$25,000 to \$100,000	\$100,000 to \$250,000	\$250,000 to \$500,000	In excess of \$500,000
Lineal issue, lineal ancestor, adopted child, husband or wife.	Widow, \$10,000; Each minor child, \$5,000; others, \$2,000; grandchildren divide parents' exemption.	1%	2%	3%	4%	5%
Brother or sister and their descendants.	If less than \$200 no tax.	3%	4%	5%	6%	7%
Other collaterals or strangers.	If less than \$200 no tax.	5%	6%	7%	8%	9%
Religious, charitable or educational corporations within the State.	All.					

LAWS OF 1913, CHAPTER 203, AS AMENDED BY LAWS OF 1915, CHAPTER 285, AND BY THE REVENUE ACT OF 1917.

Section 6: From and after the passage of this act, all real and personal property of whatever kind and nature which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state, whether the person or persons dying seized thereof be domiciled within or out of the state, or if the decedent was not a resident of this state at the time of his death, such property or any part thereof within this state, or any interest therein, or income therefrom which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor, bargainor, donor or assignor, or intended to take effect, in possession or enjoyment after such death, to any person or persons or to bodies corporate or politic, in trust or otherwise, or by reason whereof any person or body corporate or politic shall become beneficially entitled in possession or expectancy to any property or the income thereof, shall be and hereby is made subject to a tax for the benefit of the state, as follows, that is to say:

The rest of the section prescribes the rates and exemptions of the foregoing table, and requires the clerk of the superior court to appraise the estate and fix the tax when an estate is divided among the heirs without the appointment of a personal representative of the deceased.

§ 7. Provides that beneficiaries, executors, administrators can only be discharged from liability for the tax by paying it.

§ 8. All taxes imposed by this act shall be due and payable at the death of the testator, intestate, grantor, donor or vendor, unless in this act otherwise provided, and if the same are paid within six months from the date of the death of the testator, intestate, grantor, donor or vendor, a discount of two and one-half per centum shall be allowed and deducted from such taxes; if not paid within one year from the date of the death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate of six per centum per annum, to be computed from the expiration of one year from the date of the death of such testator, intestate, grantor, donor or vendor, for a period of one year, and ten per centum per annum thereafter until the same is paid. [As amended by revenue act of 1917.]

§ 8 (a). *Collection to be made by sheriff if not paid in two years.*

If taxes imposed by this act are not paid within two years after the death of the decedent, it shall be the duty of the clerk to certify to the sheriff the amount of tax due upon such inheritance, and the sheriff shall collect the same as other taxes, with an addition of two and one-half per cent as sheriff's fees for collecting same; and the sheriff is hereby given the same rights of levy and sale upon any property upon which the said tax is payable as is given in the machinery act for the collection of other taxes. The sheriff shall make return to the clerk of the superior court of all such taxes within thirty days after collection, to be accounted for by the clerk in monthly settlement with the state auditor and treasurer as provided by law: *Provided*, that time for payment and collection of such tax may be extended by the state tax commission for good reason shown. [As amended by Revenue Act of 1917.]

§ 9. Requires the executor or administrator to deduct the tax or collect it from beneficiary and gives power of sale in case of refusal of beneficiary to pay.

§ 10. Requires the court to apportion the tax between life tenants and remaindermen.

§ 11. Requires the heir to deduct the tax when a legacy is made a charge on real estate.

§ 12. Provides for receipts which must be produced on final accounting.

§ 13. Whenever any foreign executor or administrator or trustee shall assign or transfer any stocks or bonds in this state standing in the name of the decedent or in trust for a decedent, which shall be liable for the said tax, such tax shall be paid on the transfer thereof to the clerk of the court of the county where such transfer is made; otherwise the corporation permitting such transfer shall become liable to pay such tax.

§ 14. Whenever debts shall be proven against the estate of a decedent, after the distribution of legacies from which the inheritance tax has been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator if the said tax has not been paid into the state treasury, or shall be refunded by the state treasurer if it has been so paid in.

§§ 15 to 21. Make the usual provisions for the appointment of appraisers, the valuation of the estate and the collection of delinquent taxes.

Prior Statutes: Collateral inheritances have been taxed since 1847 Statutes for the last twenty years are as follows: Code of 1883, § 3867; L. 1897, ch. 168; L. 1901, ch. 9; L. 1903, Revenue Act, ch. 247; L. 1905, ch. 588; L. 1907, ch. 256; L. 1909, ch. 438; L. 1911, ch. 46.

NORTH DAKOTA

Taxes all property of non-residents within the state but exempts tangible property of residents located in another state provided said state makes a like exemption.

TABLE OF GRADED RATES AND EXEMPTIONS UNDER STATUTE OF 1917

CLASS OR RELATIONSHIP	Amount exempt	Rates of tax				
		Above exemption to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Husband or wife.....	\$10,000	1%	1½%	2%	2½%	3%
Lineal issue, lineal ancestor, adopted or mutually acknowledged child.	\$2,000					
Brother or sister or their descendants, son-in-law, daughter-in law.	\$500	1½%	2½%	3%	3½%	7½%
Aunt or uncle or their descendants...	\$250	3%	4½%	6%	7½%	9%
Brother or sister of grandparents or their descendants.	\$150	4%	6%	8%	10%	12%
All others except exempt corporations..	\$100	5%	7½%	10%	12½%	15%
Municipal corporations within the State for strictly municipal purposes, religious, charitable and educational institutions or organized by the laws of the State for such purposes within the State.	All	No tax				

TABLE OF RATES AND EXEMPTIONS FROM MARCH 15, 1913, TO MAY 1, 1917

CLASS OR RELATIONSHIP	Amount of exemption	Graded rates				
		Above exemption up to \$100,000	\$100,000 to \$250,000	\$250,000 to \$500,000	In excess of \$500,000	
Husband or wife.....	\$20,000	1%	2%	2½%	3%	
Father, mother, lineal descendant, adopted child or its lineal descendant.	\$10,000					
		Above exemption to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Brother, sister, son-in-law, daughter-in-law.	\$500	1½%	2½%	3%	3½%	4½%
Aunt or uncle and their descendants...	None	3%	4½%	6%	7½%	9%
All others except aliens, nonresidents and charitable bequests exempted by section 24.	None	5%	6%	9%	12%	15%
Collaterals or strangers who are aliens not residing in the United States, or corporations with alien charters.	None	25% on entire legacy.				

NOTE.—As to aliens probably unconstitutional, repealed by act of 1917.

This present year, 1917, North Dakota adopted an entirely new inheritance tax law. The prior statute, chapter 185, L. 1913, in force since March 15, 1913, was not greatly changed except as to graded rates and exemptions.

THE PRESENT ACT BECAME A LAW IN MAY, 1917:

Section 1. A tax shall be and is hereby imposed upon the transfer of any property or any interest therein or income therefrom in trust or otherwise, to any person, association, or corporation except county, town or municipal corporations within the state for strictly county, town or municipal purposes and corporations of this state organized under its laws solely for religious, charitable or educational purposes which shall use the property so transferred exclusively for the purpose of their organization within the state, provided:

1. By a resident of the state. When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.

2. Non-resident's property within the state. When the transfer is by will or intestate law of property within this state or within its jurisdiction and the decedent was a non-resident of the state at the time of his death.

3. In Contemplation of Death. When the transfer is of property made by a resident or by a non-resident when such non-resident's property is within the state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift, made within six years prior to the death of the grantor, vendor, or donor, of a material part of his estate, or in the nature of a final disposition or distribution thereof, and without an adequate valuable consideration, shall be construed to have been made in contemplation of death within the meaning of this section.

4. When Imposed. Such tax shall be imposed when any such person or corporation becomes beneficially entitled, in possession or expediency, to any property or the income thereof, by any such transfer whether made before or after the passage of this act.

5. Transfer Under Power of Appointment. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property, made either before or after the passage of this act, such appointment, when made, shall be deemed a transfer taxable under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

6. On Clear Market Value. The tax so imposed shall be upon the clear market value of such property at the rates hereinafter prescribed and only upon the excess of the exemptions hereinafter granted.

§§ 2, 3 and 4. Prescribe the rates and exemptions of the foregoing table. Subdivision 7, section 4, is as follows:

7. Property Without the State Exempt.—When. No tax shall be imposed upon any tangible personal property of a resident decedent when such property is located without this state, and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and which tax has actually been paid, provided such property is not without this state temporarily nor for the sole purpose of deposit or safe-keeping; and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state.

§ 5. Makes the tax due at the time of the transfer and a lien upon the property transferred until paid.

§ 6. Provides for receipts to be given by county treasurers.

§ 7. Requires the executor or administrator to produce such a receipt before his is entitled to final accounting.

§ 8. Provides that if the tax is not paid within one year interest shall be charged at the rate of 10 per cent. from date of accrual, except in case of unavoidable delay, when interest may be reduced to 6 per cent until the cause of delay is removed, after that 10 per cent.

§ 9. Gives executor or administrator power of sale in the same way as to pay debts. Requires them to collect the tax from the legatee or to deduct it from the legacy, if in money, and forbids delivery of the legacy until payment of the tax.

§ 10. Provides for a proportionate refund in case debts are subsequently proved against the estate.

§ 11. Makes further provision for refunds but provides that applications must be made within one year from payment or one year after reversal or modification of an order fixing such tax.

§ 12. Taxes bequests to executors in lieu of commissions in excess of reasonable value of services.

§ 13. Requires executors or administrators of non-resident estates to file an inventory with the state tax commission unless ancillary proceedings are brought within the state.

§ 13-a. Contents of report. Time of filing. Duty of state tax commission.—Said list shall be in the form of an affidavit and shall be sworn to by the executor or administrator of said estate, and shall contain a detailed description of the property and the value thereof, owned by said non-resident decedent in this state as of the date of his death. If such property consists in whole or in part of mortgages secured upon real or personal property situated in this state such list shall enumerate each mortgage separately, stating the name and post office address of the mortgagor, the county in which the mortgaged property is situated, the date of the execution of said mortgage, the amount for which such mortgage was given, the rate of interest and the amount due on said mortgage at the time of the death of the decedent and, in addition, if said mortgaged property consists of real estate, the legal description of the same shall be given. If such property consists in whole or in part of debt evidenced in any other manner than by mortgages secured on real or personal property, said list shall contain the name of the debtor, the amount of the debt, as of the date of the death of the decedent, and the nature of said debt. Said list shall be filed with the state tax commission within thirty days of the issuing of the letters testamentary or letters of administration, as the case may be. Upon receipt of said list in proper form the state tax commission shall proceed to determine the amount of the inheritance tax, if any, due the state of North Dakota from said estate; and upon such determination shall notify the administrator or executor of said estate immediately whether the same is taxable or exempt and, if taxable, the amount for which said estate is liable, also the manner in which the tax shall be paid.

§ 13-b. State treasurer shall issue receipt and certified statement.—The state treasurer shall, upon receipts of the total amount of the tax due from said estate issue to the administrator or executor, paying the same, his receipt therefor, and in addition to said receipt, shall at the same time issue to said administrator or executor a certified statement bearing the seal of his office to the effect that the full amount of the inheritance tax due from the said estate to the state of North Dakota has been paid.

§ 13-c. State tax commission shall issue certified statements when.—The state tax commission shall, upon determining that any such estate is exempt from the payment of any inheritance tax to the state of North Dakota, cause a certified statement of such fact to be executed by one of its members in the name of the state tax commission and shall send such certified statement to the executor or administrator of said estate.

§ 14. Duty of register of deeds as to satisfactions and assignments.—No register of deeds shall cause to be recorded or filed in his office any satisfaction

or assignment of any real or personal property mortgage executed by a foreign executor or administrator unless said satisfaction or assignment shall be accompanied, for his inspection, by either the certified statement of the state treasurer that the inheritance tax due the state of North Dakota from such estate has been paid, or by the certified statement of the state tax commission that said estate has been determined to be exempt from the payment of any inheritance tax to the state of North Dakota.

§ 14-a. Transfer of assets by foreign executor or administrator.—No safe deposit company, trust company, corporation, bank or other institution, person or persons having in their possession or under their control securities, deposits or other assets belonging to the estate of such non-resident decedent shall deliver or transfer any assets belonging to the estate of such non-resident decedent to the administrator or executor of such estate or to any other person or persons upon the order of said administrator or executor unless said administrator or executor or such other person holding such order for the transfer or delivery of such assets shall submit to said safe deposit company, trust company, corporation, bank or other institution, person or persons, having in their possession or under their control such assets belonging to the estate of the decedent either the certified statement of the state treasurer to the effect that the inheritance tax due the state of North Dakota from said estate has been paid, or the certified statement of the state tax commission to the effect that said estate is exempt from paying any inheritance tax to the state of North Dakota.

§ 14-b. Penalty.—Any register of deeds, safe deposit company, trust company, corporation, bank or other institution, person or persons, violating the provisions of this act shall be liable to the state for the amount of the tax.

§ 15. Corporate property to be apportioned.—Where stocks, bonds, mortgages, or other securities of corporations organized under the laws of this state shall have been transferred by a non-resident decedent, the tax shall be upon such proportion of the value thereof as the property of such corporation in this state bears to the total property of the corporation issuing such stocks, bonds, mortgages, or other securities.

§ 16. Holding company.—Apportionment.—If any stocks, bonds, mortgages, or other securities of a holding company or other corporation are based upon or represent in whole or in part the value of any stocks, bonds, mortgages, or other securities of a North Dakota corporation, either directly or indirectly, the transfer of the stocks, bonds, mortgages, or other securities of such holding company or other corporation shall be subject to the inheritance tax in the proportion which the North Dakota property bears to the total property represented by or subject to the total stocks, bonds, mortgages, or other securities of which those so transferred are a part.

§ 17. Debts, exemptions, etc.—To be apportioned. Whenever a tax is due from any resident or non-resident upon the transfer of any property or estate which is partly within and partly without the state, or upon any stocks, bonds, mortgages, or other securities representing any such property partly within and partly without this state, such person shall be entitled to deduct from the value of such property so transferred only a proportion of the debts, expenses of administration and exemptions, equal to the proportion which the North Dakota property bears to the entire estate of the decedent.

§ 18. Provides for rules and regulations by the tax commissions and forbids any local corporation to transfer any non-resident securities without retaining sufficient funds to pay the tax.

§ 19. Makes corporations violating provisions of the act liable for the tax and for a wilful violation may forfeit their charters.

§ 20. Gives the county court having jurisdiction to issue letters upon the estate jurisdiction in tax matters.

§ 21. Provides for petition for ancillary letters.

§ 22. Gives the county court at the seat of government jurisdiction of delinquent non-resident taxes.

The remaining sections, 23 to 47, relate to the appointment of appraisers and the usual provisions as to procedure.

Prior Statutes: L. 1903, ch. 171, L. 1905, ch. 10, L. 1913, ch. 185.

OHIO

Taxes property of non-residents within the state on transfers to collaterals and strangers.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount exempt	Rate of tax
Father, mother, husband, wife, lineal descendant, adopted child.	All.....	No tax.
State, municipality or other political subdivision for public purposes, public institutions of learning, charity or other exclusive public purpose.	All.....	No tax.
All others.....	If less than \$500.	5% on all.

GENERAL CODE OF 1910, AS AMENDED BY STATUTE OF 1913, PAGE 463.

Section 5331. All property within the jurisdiction of this state, and any interests therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which pass by will or by the intestate laws of this state, or by deed, grant, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor, to a person in trust, or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant or adopted child, shall be liable to a tax of five per cent of its value above the sum of five hundred dollars. Fifty per cent of such tax shall be for the use of the state; and fifty per cent of such tax shall go to the city, village or township in which said tax originates. All administrators, executors or trustees, and any such grantee under a conveyance made during the grantor's life, shall be liable for all such taxes, with lawful interest as hereinafter provided, until they have been paid, as hereinafter directed. Such taxes shall become due and payable immediately upon the death of the decedent and shall at once become a lien upon the property, and be and remain a lien until paid.

§ 5332. Prescribe the exemptions to institutions as above.

§ 5333. When a person bequeaths or devises property to or for the use of father, mother, husband, wife, lineal descendant, or adopted child, during life or for a term of years, and the remainder to a collateral heir or to a stranger to the blood the value of the prior estate, shall be appraised, within sixty days after the death of the testator, in the manner hereinafter provided, and deducted, together with the sum of five hundred dollars, from the appraised value of such property.

§ 5334. Taxes bequests to executors in lieu of commissions, where in excess of reasonable compensation.

§ 5335. Requires taxes to be paid within one year with a discount of 1 per cent per full month that payment is made prior to expiration of a year, after one year interest is charged at 8 per cent and after eighteen months the prosecuting attorney is required to bring proceedings on notice from the probate judge that the tax remains unpaid.

§ 5336. Requires the executor or administrator to deduct the tax or collect it from the beneficiary and must not deliver property until the tax has been paid.

§ 5337. Requires the heir to deduct the tax where a legacy is charged on real estate makes the tax a lien and enforceable in the same way as the legacy.

§ 5338. Where gift of property for a limited period tax is to be apportioned by the court, if in money tax is required to be deducted.

§ 5339. Gives power of sale to pay the tax in the same manner as to pay debts.

§ 5340. Within ten days after the filing of the inventory of every such estate, any part of which may be subject to a tax under the provisions of this subdivision of this chapter, the judge of the probate court, in which such inventory is filed, shall make and deliver to the county auditor of such county a copy of the inventory; or, if it can be conveniently separated, a copy of such part of the estate, with the appraisal thereof. The auditor shall certify the value of the estate, subject to taxation hereunder and the amount of taxes due therefrom; to the county treasurer, who shall collect such taxes, and thereupon place twenty-five per cent thereof to the credit of the county expense fund; and pay seventy-five per cent thereof into the state treasury, to the credit of the general revenue fund, at the time of making his semi-annual settlement.

§ 5341. When any of the real estate of a decedent passes to another person so as to become subject to such tax, the executor, administrator or trustee of the decedent shall inform the probate judge thereof within six months after he has assumed the duties of his trust, or if the fact is not known to him within that time, then within one month from the time that it does become known to him.

§ 5342. When for any reason the devisee, legatee or heir who has paid such tax relinquishes or reconveys a portion of the property on which it was paid, or it is judicially determined that the whole or part of such tax ought not to have been paid, the tax, or the due proportional part hereof shall be repaid to him by the executor, administrator or trustee.

§ 5343. The value of such property, subject to said tax, shall be its actual market value as found by the probate court. If the state, through the prosecuting attorney of the proper county, or any person interested in the succession to the property, applies to the court, it shall appoint three disinterested persons, who being first sworn, shall view and appraise such property at its actual market value for the purposes of this tax, and make return thereof to the court. The return may be accepted by the court in like manner as the original inventory of the estate is accepted, and if so accepted, it shall be binding upon the person by whom this tax is to be paid, and upon the state. The fees of the appraisers shall be fixed by the probate judge and paid out of the county treasury upon the warrant of the county auditor. In case of an annuity or life estate, the value thereof shall be determined by the so-called actuaries' combined experience tables and five per cent compound interest.

§ 5344. The probate court, having either principal or auxiliary jurisdiction of the settlement of the estate of the decedent, shall have jurisdiction to hear and determine all questions in relation to such tax that arises, affecting any devise, legacy or inheritance under this subdivision of this chapter, subject to appeal as in other cases, and the prosecuting attorney shall represent the interests of the state in such proceedings.

§ 5345. Each probate judge, at least once in six months, shall render to the county auditor a statement of the property within the jurisdiction of his court that has become subject to such tax during such period, the number and amount of such taxes as will accrue during the next six months, so far as they can be determined from the probate records, and the number and amount thereof due and unpaid. Each probate judge shall keep a separate record, in a book to be provided for that purpose, of all cases arising under the provisions of this subdivision of this chapter.

§ 5346. The fees of officers having duties to perform under the provisions of this subdivision of this chapter, shall be paid by the county from the county expense fund thereof and shall be the same as allowed by law for similar services. In ascertaining the amounts due the state, seventy-five per cent of the cost of collection and other necessary and legitimate expenses incurred by the county in the collection of such taxes, shall be charged to the state and deducted from the amount of taxes to be paid into the state treasury.

§ 5347. A final settlement of the account of an executor, administrator or trustee shall not be accepted or allowed by the probate court unless it shows, and the judge of that court finds, that all taxes imposed by the provisions of this subdivision of this chapter, upon any property or interest therein;

belonging to the estate to be settled by such account, have been paid. The receipt of the county treasurer shall be the proper voucher for such payment.

§ 5348. The word "property" as used in this subdivision of this chapter includes real and personal estate, any form of interest therein, and annuities.

OKLAHOMA

Taxes only the tangible property of non-residents within the state including stocks and bonds of corporations.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount of exemption	Graded rates			
		Above exemption to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	In excess of \$100,000
Father, mother, husband, wife, child, brother, sister, son-in-law, daughter-in-law, adopted or mutually acknowledged child, lawful lineal descendants.	Widow, \$15,000; each child, \$10,000; all others, \$5,000.	1%	2%	3%	4%
All others except for religious, charitable or educational purposes which are exempted.	\$2,500	5%	6%	8%	10%

LAWS OF 1915, CHAPTER 162, BECAME A LAW MARCH 15th, 1915.

Section 1. Imposes a tax on all transfers by will or the intestate laws and by deed, grant, bargain, sale or gift made in contemplation of death or intended to take effect in possession or enjoyment at or after such death, when the transferee becomes beneficially entitled in possession or expectancy either before or after the passage of the act.

§ 2. When property is not specifically devised it is deemed transferred proportionately among all the general legatees.

§ 3. Whenever any person or corporation shall exercise power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been transferred to such donee by will.

§ 4. That this act shall not apply to transfers, such as above mentioned, made in good faith for religious, charitable or educational purposes and uses. The words "tangible property" shall mean corporeal property such as real estate, and goods, wares, and merchandise and shares of stock, bonds, indebtedness of, or pecuniary interest in the property of any domestic or foreign corporations, associations, joint stock companies or trusts whose ownership is held or represented by shares engaged solely in interstate commerce or business done within this state, and that proportion of the value of the property represented by the stock, bonds, indebtedness of, or pecuniary interests in the property of any domestic or foreign corporations, associations, joint stock companies, or trusts whose ownership is held or represented by shares engaged in interstate or intrastate commerce, plus that portion of such business done or property employed in this state in interstate commerce, bears to the total business done, or property employed; and in the case of transportation and transmission companies doing interstate as well as intrastate commerce in this state, that portion of the value of the stock, bonds, indebtedness of or pecuniary interest in the property of any such corporation shall be deemed tangible, as the sum of the lines in this state bears to the entire extent of the lines operated by the corporation, association, joint stock companies, or trusts

whose ownership is held or represented by shares, the same being deemed to have a situs in this state for the purposes of this act.

§ 5. The words "intangible property" as used herein shall be taken to mean incorporeal property, other than that named as tangible, and to include bonds, notes, credit and evidence of debts and such shares of stock of such corporations, associations, joint stock companies or trusts whose ownership is held or represented by shares as is not to be deemed tangible and such portions of such shares of stock, bonds, indebtedness of, or pecuniary interest in the property of any corporations, associations, joint stock companies, or trusts whose ownership is held or represented by shares as are not to be deemed tangible.

§§ 6 and 7. Fix the rates and exemptions of the foregoing table.

§ 8. Every such tax shall be paid and remain a lien upon the property transferred until paid, and the person to whom the property is so transferred, and the administrator, executor, and trustees of every estate so transferred, shall be personally liable for such tax until its payment; and as to transfers of stock, bonds, indebtedness of, or pecuniary interest in the property of any herein, declared taxable there shall be a lien upon the property located and business transacted within this state of such corporation, prior to all other liens, and unless paid by such transferee, shall be enforced against the corporation. When paid by the corporation it shall, within this state, have a lien therefor upon the shares of stock, bonds, indebtedness of or pecuniary interest in the property of any so transferred which shall be superior to all other liens thereon. And all corporations, associations, joint stock companies, or trusts whose ownership is held or represented by shares which do business within this state and have property here or have property used in this state, shall keep a record at some convenient place in this state showing all transfers of stocks, shares, indebtedness, bonds or other pecuniary interest in their property as come to their notice at any time and shall have the right before paying off any sum attributable to such share of stock, bond, indebtedness or pecuniary interest to charge to the same and recoup itself for the sums payable in that behalf by such company hereunder. The tax shall be paid to the state treasurer, who shall give, and every executor, administrator or trustee shall take duplicate receipts from him for such payments, one of which he shall immediately send to the state auditor, whose duty it shall be to charge the treasurer so receiving the tax, with the amount thereof, and to seal said receipt with the seal of his office, and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; but no executor, administrator or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of this act, unless he shall produce a receipt so sealed and countersigned by the state auditor or a copy thereof certified by him (unless a bond shall have been filed as hereinafter prescribed). And all taxes imposed by this act shall be due and payable at the time of the transfer, except as hereinafter provided. Taxes upon the transfer of any estate, property or interest therein, limited, conditioned, dependent or determinable upon the happenings of any contingency or future event, by reason of which the fair market value thereof cannot be ascertained at the time of the transfer, as herein provided, shall accrue and become due and payable when the beneficiaries shall come into actual possession or enjoyment thereof.

§ 9. Imposes interest at 10 per cent from time the tax is due and payable.

§ 10. Requires the executor or administrator to deduct the tax or collect it from the beneficiary, to whom he must not deliver the property until the tax has been collected. Requires the heir to deduct the tax when the legacy is charged on real estate, and the tax may be enforced against it in the same manner as the legacy. If property is given for a limited period the executor must apply to the court for an apportionment of the tax among the beneficiaries.

§ 11. Makes provision for a proportionate refund where debts are proved against the estate after distribution.

§ 12. Taxes bequests to executors in lieu of commissions when in excess of reasonable compensation.

§ 13. If a foreign executor, administrator or trustee shall assign or transfer any property taxable under this act, the tax shall be paid to the state treasurer on the transfer thereof. No safe deposit company, bank, or other institution in this state, or person or persons holding securities or assets of a decedent shall deliver or transfer the same to the executor, administrator, or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the state auditor at least ten days prior to the said transfer; nor shall such safe deposit company, bank or other institution, person or persons deliver or transfer any securities or assets of the estate of a non-resident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of this act, unless the state auditor consents thereto in writing; and it shall be lawful for the state treasurer or state auditor personally or by representative, to examine said securities or assets at the time of such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion of the amount to pay such tax as herein provided, shall render such safe deposit company, trust company, bank or other institution, person or persons, liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of this act.

§ 14. Gives the county court having jurisdiction of the estate jurisdiction in the tax proceedings.

§§ 15 to 28. Provide for the appointment of appraisers, the valuation of the estate, appeal and collection of delinquent taxes, closely following the New York practice. Life estates and remainders are computed by the commissioner of insurance on mortality tables on the basis of 5 per cent.

Prior Statutes: L. 1907-8, ch. 81.

OREGON

Taxes all property of non-residents within the state.

TABLE OF RATES AND EXEMPTIONS AS PRESCRIBED BY CHAP. 372

In effect after May 21, 1917.

CLASS OR RELATIONSHIP	Amount exempt	Rates							
		\$5,000 to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$200,000	\$200,000 to \$400,000	\$400,000 to \$600,000	In excess of \$600,000	
Grandfather, grandmother, father, mother, husband, wife, child, brother, sister, wife, or widow of a son, or the husband of a daughter.	\$5,000	1%	1½%	2%	2½%	3%	3½%	4%	
		\$1,000 to \$5,000	\$5,000 to \$10,000	\$10,000 to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$200,000	In excess of \$200,000	
Aunt, uncle, niece, nephew or lineal descendant of the same.	\$1,000	2%	3%	4%	5%	6%	7%	8%	
		\$500 to \$2,500	\$2,500 to \$5,000	\$5,000 to \$10,000	\$10,000 to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$200,000	In excess of \$200,000
All other cases except exempt charitable corporations, mentioned in table of rates, prior to May 21, 1917.	\$500	3%	4%	5%	6%	7%	8%	9%	10%

TABLE OF RATES AND EXEMPTIONS, PRIOR TO MAY 21, 1917

CLASS OR RELATIONSHIP	Amount of exemption	Rates			
Grandparents, parents, husband, wife, child, brother, sister, son-in-law, daughter-in-law, adopted or mutually acknowledged child, lawful lineal descendants.	\$5,000 to each; no tax where entire estate is less than \$10,000.	1% on all above \$5,000.			
Aunt, uncle, niece, nephew and their lineal descendants.	\$2,000 to each; no tax on estates less than \$5,000.	2% on all above \$2,000.			
Benevolent, charitable or benevolent institutions incorporated within the state or carrying out those purposes within the State.	All exempt. . . .	No tax.			
		On all up to \$10,000	\$10,000 to \$20,000	\$20,000 to \$50,000	In excess of \$50,000
All others.....	If less than \$500 to each, no tax.	3%	4%	5%	6%

LAWS OF 1903, PAGE 49, AS AMENDED BY LAWS OF 1905, CHAPTER 178, LAWS OF 1909, CHAPTERS 15 and 211, LAWS OF 1915, CHAPTER 42, AND CHAPTER 372, LAWS OF 1917.

Section 1. All property within the jurisdiction of the state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by statutes of inheritance of this or any other state, or by deed, grant, bargain, sale, or gift, made in contemplation of the death of the grantor, or bargainor, or intended to take effect in possession or enjoyment after the death of the grantor, bargainor, or donor, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, or by reason whereof any person, or body politic or corporate, shall become beneficially entitled, in possession or expectation, to any property or income thereof, shall be and is subject to a tax at the rate hereinafter specified in section 2 of this act, to be paid to the treasurer of the state for the use of the state; and all heirs, legatees, and devisees, administrators, executors, and trustees, and any such grantee under a conveyance, and any such donee under a gift, made during the grantor or donor's life, shall be respectively liable for any and all such taxes, with interest thereon, until the same shall have been paid, as hereinafter provided.

The rest of the section and all of section 2 fix the rates and exemptions of the foregoing tables.

§ 3. All taxes imposed by this act shall take effect at and accrue upon the death of the decedent, or donor, and shall be due and payable at the expiration of eight months from such death, except as otherwise provided in this act; *provided, however*, that taxes upon any devise, bequest, legacy, or gift, limited, conditioned, dependent, or determinable upon the happening of any contingency or future event, by reason of which the full and true value thereof can not be ascertained at or before the time when the taxes become due and payable as aforesaid, shall accrue and become due and payable when the person or corporation beneficially entitled thereto shall come into actual possession or enjoyment thereof.

§ 4. Any administrator, executor, or trustee having in charge, or in trust, any property for distribution, embraced in or belonging to any inheritance, devise, bequest, legacy, or gift, subject to the tax thereon as imposed by this act, shall deduct the tax therefrom, and within thirty days thereafter he shall

pay over the same to the state treasurer, as herein provided. If such property be not in money, he shall collect the tax on such inheritance, devise, bequest, legacy, or gift, upon the appraised value thereof from the person entitled thereto. He shall not deliver, or be compelled to deliver, any property embraced in any inheritance, devise, bequest, legacy, or gift, subject to tax under this act, to any person until he shall have collected the tax thereon.

§ 5. Provides for receipts which must be produced on final settlement.

§ 6. Every tax imposed by this act shall be a lien upon the property embraced in any inheritance, devise, bequest, legacy or gift, until paid, and the person to whom such property is transferred, and the administrators, executors and trustees of every estate embracing such property shall be personally liable for such tax until its payment, to the extent of the value of such property; *provided, however*, that in all estates, excepting those of non-resident deceased, all inheritance taxes shall be sued for within five years after they have become due and legally demandable, otherwise they shall be conclusively presumed to be paid and cease to be a lien as against the estate, or any part thereof, of the decedent; *provided, further*, that in estates of non-resident deceased, such limitation period shall not apply until at least one year shall have elapsed after official notice of the death of said non-resident deceased, with description and probable value of the estate, shall have been filed with the state treasurer. As amended by ch. 42, L. 1915.

§ 7. Allows a discount of 5 per cent if tax is paid within eight months. After eight months 8 per cent interest charged from time when due, except in case of unavoidable delay, when it may be reduced to 6 per cent until cause of delay is removed; then 8 per cent.

§ 8. Gives power of sale to pay tax in the same way as to pay debts.

§ 9. Requires the heir to deduct the tax when legacy is charged on real estate, makes tax a lien and enforceable in same manner as a legacy. Where property is given for a limited period must apportion tax among beneficiaries.

§ 10. Provides for a refund of taxes erroneously paid when application is made within three years of payment.

§ 11. If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligations in this state standing in the name of the decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the state treasurer on or before the transfer thereof, and no such assignment or transfer shall be valid unless such tax is paid.

§ 12. No safe deposit company, trust company, bank, corporation, or other institution, person or persons, holding securities or assets of a decedent, or corporation in which said decedent, at the time of his death, owned any stock, shall deliver or transfer the same to the executors, administrators, or legal representatives of said decedent, or upon their order or request, unless notice of the said time and place of such intended transfer be served upon the state treasurer in writing at least five days prior to the said transfer; and it shall be lawful for the said state treasurer, personally or by representative, to examine said securities prior to the time of such delivery or transfer. If upon such examination the state treasurer, or his said representative, shall, for any cause, deem it advisable that such securities or assets should not be immediately delivered or transferred, he may forthwith notify, in writing, such company, bank, institution, or person to defer delivery or transfer thereof for a period not to exceed ten days from the date of such notice, and thereupon it shall be the duty of the party notified to defer such delivery until the time stated in such notice, or until the revocation thereof within such ten days; failure to serve the notice first above-mentioned or allow such examination, or to defer the delivery of such securities or assets for the time stated in the second of said notices, shall render said safe deposit company, trust company, corporation, bank, or other institution, person or persons, liable to the payment of the tax due on said securities or assets, pursuant to the provisions of this act.

§ 13. Provides that remaindermen may defer payment of tax until they receive the property by filing a bond with sworn inventory within six months in three times the amount of the tax and renewing it every five years.

§ 14. Gives the county court granting letters jurisdiction in tax proceedings.

§§ 16 to 37. Make the usual provisions for inventory, appraisal, appeal, reports and collection of delinquent taxes, the compromise of uncertain tax claims, and the valuation of life estates and remainders, using combined experience tables on the 4 per cent basis.

§ 38. Except as to real property located outside of the state passing in fee from the decedent owner, the tax imposed under section 2 shall hereafter be assessed against and be collected from property of every kind, which, at the death of the decedent owner, is subject to, or thereafter, for the purpose of distribution, is brought into this state and becomes subject to the jurisdiction of the courts of this state for distributive purposes, or which was owned by any decedent domiciled within the state at the time of the death of such decedent, even though the property of said decedent so domiciled was situated outside of the state.

§ 39. In case of any property belonging to a foreign estate, which estate in whole or in part is liable to pay an inheritance tax in this state, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator, or trustee of such foreign estates files with the clerk of the court having ancillary jurisdiction, and with the state treasurer, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate.

§§ 40, 41, 42 and 43. Provide for the compensation of officers, impose a penalty for accepting a fee or reward, and repeal all inconsistent statutes.

Prior statutes: None prior to 1903.

PENNSYLVANIA

Taxed collaterals and strangers only prior to 1917.

Taxed property of non-residents within the state on transfers to collaterals and strangers prior to 1917; but by construction of the court this is confined to tangibles.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount exempt	Rates
Father, mother, wife, children, lawful lineal descendants, wife or widow of a son.	All	No tax.
All others	If less than \$250.	5% on all.

LAWS OF 1887, CHAPTER 37.

Section 1. Be it enacted, etc., that all estates, real, personal and mixed, of every kind whatsoever, situated within this state, whether the person or persons dying seized thereof be domiciled within or out of this state, and all such estates situated in another state, territory or country, when the person, or persons, dying seized thereof, shall have their domicile within this commonwealth, passing from any person, who may die seized or possessed of such estates, either by will, or under the intestate laws of this state, or any part of such estate, or estates, or interest therein, transferred by deed, grant, bargain, or sale, made or intended to take effect, in possession or enjoyment after the death of the grantor, or bargainor to any person or persons, or to bodies corporate or politic, in trust or otherwise, other than to or for the use of father, mother, husband, wife, children and lineal descendants born in lawful wedlock, or the

wife, or widow of the son of the person dying seized or possessed thereof, shall be and they are hereby made subject to a tax of five dollars on every hundred dollars of the clear value of such estate or estates, and at and after the same rate for any less amount, to be paid to the use of the commonwealth; and all owners of such estates, and all executors and administrators and their sureties, shall only be discharged from liability for the amount of such taxes or duties, the settlement of which they may be charged with, by having paid the same over for the use aforesaid, as hereinafter directed; provided, that no estate which may be valued at less than two hundred and fifty dollars shall be subject to the duty or tax.

§ 2. Taxes bequests to executors in lieu of commissions in excess of reasonable compensation.

§ 3. In all case where there has been or shall be a devise, descent or bequest to collateral relatives or strangers, liable to the collateral inheritance tax, to take effect in possession, or to come into actual enjoyment after the expiration of one or more life estates, or a period of years, the tax on such estate shall not be payable, nor interest begin to run thereon, until the person or persons liable for the same shall come into actual possession of such estate, by the termination of the estates for life or years, and the tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner as aforesaid; provided, that the owner shall have the right to pay the tax at any time prior to his coming into possession, and in such cases, the tax shall be assessed on the value of the estate at the time of the payment of the tax, after deducting the value of the life estate or estates for years; and provided further, that the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid. And the owner of any personal estate shall make a full return of the same to the register of wills of the proper county within one year from the death of the decedent, and within that time enter into security for the payment of the tax to the satisfaction of such register; and in case of failure so to do the tax shall be immediately payable and collectible.

§ 4. If the collateral inheritance tax shall be paid within three months after the death of the decedent, a discount of 5 per centum shall be made and allowed, and if the said tax is not paid at the end of one year from the death of the decedent, interest shall then be charged at the rate of 12 per centum per annum on such tax; but where from claims made upon the estate, litigation, or other unavoidable cause of delay, the estate of any decedent or a part thereof cannot be settled up at the end of the year from his or her decease, 6 per centum per annum shall be charged upon the collateral inheritance tax, arising from the unsettled part thereof, from the end of such year until there be default; provided, further, that where real or personal estate withheld by reason of litigation or other cause of delay in manner aforesaid from the parties entitled thereto, subject to said tax, has not been, or shall not be productive to the extent of 6 per centum per annum, they shall not be compelled to pay a greater amount as interest to the commonwealth than they may have realized, or shall realize from such estate during the time the same has been or shall be withheld as aforesaid.

§ 5. Requires the executor or administrator to deduct the tax if in money; if in property to collect from beneficiary, and gives power of sale in case of neglect or refusal; must not deliver property until the tax has been paid.

§ 6. If the legacy subject to collateral inheritance tax be given to any person for life, or for a term of years, or for any other limited period, upon a condition or contingency, if the same be money, the tax thereon shall be retained upon the whole amount; but if not money, application shall be made to the orphan's court having jurisdiction of the accounts of the executors or administrators to make apportionment, if the case requires it, of the sum to be paid by such legatees, and for such further order relative thereto as equity shall require.

§ 7. Requires the heir to deduct the tax where legacy is charged on real estate, makes it a lien, and payment may be enforced in same manner as payment of a legacy.

§ 8. Whenever any real estate of which any decedent may die seized shall be subject to the collateral inheritance tax, it shall be the duty of executors and administrators to give information thereof to the register of the county, where administration has been granted, within six months after they undertake the execution of their respective duties, or if the fact be not known to them within that period, within one month after the same shall have come to their knowledge, and it shall be the duty of the owners of such estate, immediately upon the vesting of the estate, to give information thereof to the register having jurisdiction of the granting of administration.

§ 9. It shall be the duty of any executor or administrator, on the payment of collateral inheritance tax, to take duplicate receipts from the register, one of which shall be forwarded forthwith to the auditor general, whose duty it shall be to charge the register receiving the money with the amount, and seal with the seal of his office, and countersign the receipt and transmit it to the executor or administrator, whereupon it shall be a proper voucher in the settlement of the estate; but in no event shall an executor or administrator be entitled to a credit in his account by the register, unless the receipt is so sealed and countersigned by the auditor general.

§ 10. Whenever any foreign executor, or administrator, or trustee, shall assign or transfer any stocks or loans in this commonwealth, standing in the name of the decedent, or in trust for a decedent, which shall be liable for the collateral inheritance tax, such tax shall be paid, on the transfer thereof, to the register of the county where such transfer is made; otherwise the corporation permitting such transfer shall become liable to pay such tax.

§ 11. Whenever debts shall be proven against the estate of a decedent, after distribution of legacies from which the collateral inheritance tax has been deducted, in compliance with this act, and the legatee is required to refund any portion of a legacy, a portion of the said tax shall be repaid to him by the executor or administrator, if the said tax has not been paid into the state or county treasury, or by the county treasurer, if it has been so paid.

§ 12. It shall be the duty of the register of wills of the county, in which letters testamentary, or of administration are granted, to appoint an appraiser as often as and whenever occasion may require to fix the valuation of estates which are, or shall be, subject to collateral inheritance tax, and it shall be the duty of such appraiser to make a fair and conscionable appraisement of such estates, and it shall further be the duty of such appraiser to assess and fix the cash value of all annuities and life estates growing out of said estates, upon which annuities and life estates the collateral inheritance tax shall be immediately payable out of the estate at the rate of such valuation: provided, that any person or persons not satisfied with said appraisement shall have the right to appeal, within thirty days, to the orphans' court of the proper county or city, on paying, or giving security to pay, all costs, together with whatever tax shall be fixed by said court, and upon such appeal said courts shall have jurisdiction to determine all questions of valuation, and of the liability of the appraised estate for such tax, subject to the right of appeal to the supreme court as in other cases.

§ 13. It shall be a misdemeanor in any appraiser, appointed by the register to make any appraisement in behalf of the commonwealth, to take any fee or reward from any executor or administrator, legatee, next of kin, or heir of any decedent, and for any such offense the register shall dismiss him from such service, and upon conviction in the quarter sessions, he shall be fined not exceeding five hundred dollars, and imprisoned not exceeding one year, or both, or either, at the discretion of the court.

§ 14. It shall be the duty of the register of wills to enter in a book, to be provided at the expense of the commonwealth, to be kept for that purpose, and which shall be a public record, the returns made by all appraisers under this act, opening an account in favor of the commonwealth against the decedent's estate, and the register may give a certificate of payment of such tax from said record; and it shall be the duty of the register to transmit to the auditor general, on the first day of each month, a statement of all returns made by appraisers during the preceding month, upon which the taxes remain unpaid which statement shall be entered by the auditor general in a book to be kept by

him for that purpose. And whenever any such tax shall have remained due and unpaid for one year, it shall be lawful for the register to apply to the orphans' court, by bill or petition, to enforce the payment of the same; whereupon said court, having caused due notice to be given to the owner of the real estate charged with the tax, and to such other persons as may be interested, shall proceed, according to equity, to make such decrees, or orders, for the payment of the said tax, out of such real estate, as shall be just and proper.

§ 15. If the register shall discover that any collateral inheritance tax has not been paid over, according to law, the orphans' court shall be authorized to cite the executors or administrators of the decedent, whose estate is subject to the tax, to file an account or to issue a citation to the executors, administrators, or heirs, citing them to appear on a certain day and show cause why the said tax should not be paid; and when personal service cannot be had, notice shall be given for four weeks, once a week, in at least one newspaper published in said county; and if the said tax shall be found to be due and unpaid, the said delinquent shall pay said tax and costs. And it shall be the duty of the register, or the auditor general, to employ an attorney, of the proper county, to sue for the recovery and amount of such tax, and the auditor-general is authorized and empowered, in settlement of accounts of any register, to allow him costs of advertising and other reasonable fees and expenses incurred in the collection of tax.

§ 16. The registers of wills, of the several counties of this commonwealth, upon their filing with the auditor-general the bond hereinafter required shall be the agents of the commonwealth for the collection of the collateral inheritance tax; and for services rendered in collecting and paying over the same, the said agents shall be allowed to retain, for their own use, such percentage as may be allowed by the auditor-general, not exceeding five per centum on all taxes paid and accounted for: Provided, That this section shall not apply to the fees of registers elected prior to the passage of this act.

§ 17. The said register shall give bond to the commonwealth in such penal sum as the orphans' court of the county may direct with two or more sufficient sureties for the faithful performance of the duties hereby imposed, and for the regular accounting and paying over of the amounts to be collected and received, and said bond, on its execution and approval, by the said orphans' court, to be forwarded to the auditor-general.

§ 18. Until bond and security be given, as required by the preceding section, the said collateral inheritance tax shall be received and collected by the county treasurer as heretofore, and in such cases all the provisions of this act, relating to collection and payment by registers, shall apply to the county treasurer.

§ 19. It shall be the duty of the register of wills, of each county, to make returns and payment to the state treasurer of all the collateral inheritance taxes he shall have received, stating for what estate paid, on the first Mondays of April, July, October and January, in each year; and for all taxes collected by him and not paid over within one month, after his quarterly return of the same, he shall pay interest at the rate of twelve per centum per annum until paid.

§ 20. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied: Provided, That the said lien shall be limited to the property chargeable therewith: and provided further, That all collateral inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to have been paid, and cease to be a lien as against any purchasers of real estate: and provided further, That all taxes due and legally demandable at the date of the passage of this act, the collection of which would be barred by the provisions hereof, shall not be barred if suit shall be brought therefor within one year from the date of the passage of this act.

§ 21. All laws, or parts of laws, heretofore approved, relating to the collection of the collateral inheritance tax, and inconsistent herewith, be and the same are hereby repealed.

Note.—The law has remained substantially without change for half a century until the statute of 1917.

THE STATUTE OF 1917.

July 11, 1917, the governor approved the following new inheritance tax statute:

An Act for the imposition and collection of certain inheritance taxes.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the authority of the same That all estates real, personal and mixed of every kind whatsoever situated within this Commonwealth whether the person dying seized thereof be domiciled within or without this Commonwealth and all such estates situated in another State, territory or country when the person dying seized thereof shall have his domicile within this Commonwealth passing from any person who may die seized or possessed of such estates either by will or under the intestate laws of this Commonwealth or any part of such estates or interests therein transferred by deed, grant, bargain, or sale made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor to or for the use of father, mother, husband, wife, children, lineal descendants born in lawful wedlock, children of a former husband or wife, or the wife or widow of the son of a person dying seized or possessed thereof or to legally adopted children are hereby made subject to a tax of two (\$2) dollars on every hundred dollars of the clear value of such estates and at the same rate for any less amount to be paid for the use of the Commonwealth.

The tax hereinbefore provided is also imposed on any estate passing from the mother of an illegitimate child or from any person of whom the mother is a lineal descendant to such illegitimate child, his wife or widow. Such tax also applies to any estate passing from an illegitimate child to his mother.

§ 2. The register of wills of the county in which letters testamentary or of administration are granted shall appoint an appraiser whenever occasion may require to fix the value of the estates hereinbefore subjected to tax. Such appraiser shall make a fair conscionable appraisement of such estates and assess and fix the cash value of all annuities and life estates growing out of said estates upon which annuities and life estates, the tax imposed by this act shall be immediately payable out of the estate at the rate of such valuation.

§ 3. The compensation of such appraisers shall be as follows, namely: For each day during which an appraiser shall actually be engaged in making appraisements of property subject to the tax he shall receive the sum of five dollars. If it shall be necessary for the appraiser to travel from his place of residence to appraise property subject to the tax he shall be allowed such actual necessary traveling expenses as he may incur, which expenses shall be itemized in a sworn statement to be returned to the register and subject to the final approval of the auditor-general.

§ 4. Whenever because of the complicated nature of an estate subject to the payment of such tax the interest of the Commonwealth shall require the appointment as appraiser of such estate of a person possessed of expert or technical knowledge to ascertain the value thereof; reasonable additional compensation shall be allowed such appraiser for the exercise of such expert or technical knowledge. In case where after the appointment of an appraiser it shall appear that the proper appraisement of said estate will require the services of a person possessed of expert or technical knowledge, whereof the appraiser appointed is not possessed, the appraiser may employ the services of a person possessed of expert or technical knowledge to assist him in the appraisement, and for such services the person so employed shall receive reasonable compensation. In all such cases the register of wills appointing the appraiser shall certify to the auditor-general that there is an actual necessity for the appointment of an appraiser possessed of expert or technical knowledge or that the appraiser already appointed to appraise the estate in question should be assisted by a person possessed of such knowledge. No person shall be appointed as such expert appraiser or as expert assistant to the appraiser until the approval of the auditor-general of said appointment is first obtained, nor shall any payment be made to any appraiser or to any

person employed by him under this section until an itemized statement of the services performed and the compensation recommended shall have been rendered under oath or affirmation to the auditor-general for his approval and shall have received the same. No clerk or other person employed in the office of a register of wills shall be appointed as an expert appraiser of an estate subject to the payment of such tax nor as an expert to assist the appraiser of such estate.

§ 5. It shall be a misdemeanor for an appraiser to take any fee or reward from any executor or administrator, legatee, lineal descendent, or heir of any decedent, and for any such offense the register shall dismiss him from such service. Upon conviction of such misdemeanor such appraiser shall be fined not exceeding five hundred dollars or imprisoned not exceeding one year or both.

§ 6. Any person not satisfied with any appraisement may appeal within thirty days to the orphans' court on paying or giving security to pay all costs, together with whatever tax shall be fixed by the court. Upon such appeal the court may determine all questions of valuation and of the liability of the appraised estate for such tax subject to the right of appeal to the supreme or superior court.

§ 7. The register of wills shall enter in a book to be provided at the expense of the commonwealth, which shall be a public record, the returns made by all appraisers under the provisions of this act opening an account in favor of the commonwealth against each decedent's estate. The register may give certificates of payment of such tax from such record. The register shall transmit to the auditor-general on the first day of each month a statement of all returns made by appraisers during the preceding month upon which the taxes have been paid or remain unpaid, which statement shall be entered by the auditor-general in a book to be kept for that purpose. Whenever any such tax shall have remained due and unpaid for one year the register may apply to the orphans' court by bill or petition to enforce the payment of the same, whereupon the court having caused notice to be given to the owner of the real estate charged with the tax and to such other person as may be interested shall proceed according to equity to make such decree or orders for the payment of the tax out of such real estate as shall be just and proper.

§ 8. If the register shall discover that any tax imposed by this act has not been paid the orphans' court may cite the executors or administrators of the decedent whose estate is subject to the tax to file an account or to appear on a certain day and show cause why the tax should not be paid. When personal service cannot be had notice shall be given for four weeks, once a week in at least one newspaper published in the county and in the legal periodical designated by the rules of court of the county for the publication of legal notices. If the tax shall be found to be due the delinquent shall pay the tax and costs. The auditor-general is authorized to employ an attorney of the county to sue for the recovery of the amount of such tax. The auditor-general is authorized to employ a resident attorney in all counties having a population of one hundred thousand and less than five hundred thousand and in counties having a population of five hundred thousand and more, such additional resident attorneys as may be necessary to protect the commonwealth's interests in all matters relating to enforcing the provisions of this act. Said resident attorney or attorneys shall be allowed such reasonable compensation as may be fixed by the auditor-general, which shall be paid from the moneys realized from such taxes. The auditor-general in the settlement of accounts of any register may allow him costs of advertising and other reasonable fees and expenses incurred in the collection of the tax.

§ 9. Where there is a devise, descent, or bequest liable to the tax hereinbefore imposed, which devise, descent, or bequest is to take effect in possession or to come into actual enjoyment after the expiration of one or more life estates or a period of years, the tax on such estate shall not be payable nor shall interest begin to run thereon until the person liable for the same shall come into actual possession of such estate by the termination of the estates for life or years. The tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner, but the owner

may pay the tax at any time prior to his coming into possession. In such cases the tax shall be assessed on the value of the estate at the time of the payment of the tax after deducting the value of the life estate or estates for years. The tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid. The owner of any personal estate shall make a full return of the same to the register of wills within one year from the death of the decedent and within that time enter into security for the payment of the tax to the satisfaction of such register. In case of failure so to do the tax shall be immediately payable.

§ 10. If the tax is paid within three months after the death of the decedent a discount of five per centum shall be allowed. If the tax is not paid at the end of one year from the death of the decedent interest shall be charged at the rate of twelve per centum per annum on such tax. Where because of claims made upon the estate litigation or other unavoidable cause of delay the estate of any decedent or any part thereof cannot be settled up at the end of the year interest at the rate of six per centum per annum shall be charged upon the tax arising from the unsettled part thereof from the end of such year until there be default. Where real or personal estate withheld by reason of litigation or other cause of delay in manner aforesaid from the parties entitled thereto, subject to such tax, has not been productive to the extent of six per centum per annum, the proper parties shall not pay a greater amount as interest to the commonwealth than they have realized or shall realize from such estate during the time the same has been or shall be withheld as aforesaid.

§ 11. The executor or administrator or other trustee paying any legacy or share in the distribution of any estate subject to the said tax shall deduct therefrom at the rate of two dollars in every hundred dollars upon the whole legacy or sum paid, or if not money he shall demand payment of a sum to be computed at the same rate upon the appraised value thereof. No executor or administrator shall be compelled to pay or deliver any specific legacy or article to be distributed subject to tax except on the payment into his hands of a sum computed on its value as aforesaid. In case of neglect or refusal on the part of such legatee to pay the same such specific legacy or article or so much thereof as shall be necessary shall be sold by such executor or administrator at public sale after notice to such legatee and the balance that may be left in the hands of the executor or administrator shall be distributed as is or may be directed by law. Every sum of money retained by any executor or administrator or paid into his hands on account of any legacy or distributive share for the use of the commonwealth shall be paid by him without delay.

§ 12. When a legacy subject to tax under this act is given to any person for life or for a term of years, or for any other limited period upon the condition or contingency if the same be money the tax thereon shall be retained upon the whole amount, but if not money, application shall be made to the orphans' court to make apportionment, if the case require it, of the sum to be paid by such legatees and for such further order relative thereto as equity shall require.

Whenever any such legacy shall be charged upon or payable out of real estate the heir or devisee before paying the same shall deduct therefrom at the rate aforesaid and pay the amount so deducted to the executor and the same shall remain a charge upon such real estate until paid and the payment thereof shall be enforced by the decree of the orphans' court in the same manner as the payment of such legacy may be enforced.

§ 13. Whenever any real estate of which any decedent may die seized shall be subject to the tax, the executors and administrators shall give information thereof to the register of the county where administration has been granted within six months after they undertake the execution of their respective duties, or if the fact be not known to them within that period then within one month after the same shall have come to their knowledge. The owners of such estate immediately upon its vesting shall give information thereof to the register having jurisdiction of the granting of administration.

§ 14. Any executor or administrator on the payment of said tax shall take duplicate receipts from the register, both of which shall be forwarded forth-

with to the auditor-general, who shall charge the register receiving the money with the amount and seal with the seal of his office and countersign the original receipt and transmit it to the executor or administrator whereupon it shall be a proper voucher in the settlement of the estate. In no event shall an executor or administrator be entitled to a credit in his account by the register unless the receipt is so sealed and countersigned by the auditor-general.

§ 15. Whenever any foreign executor or administrator, or trustee, shall assign or transfer any stocks or loans in this commonwealth standing in the name of the decedent, or in trust for the decedent, which shall be liable for the tax imposed by this act, such tax shall be paid on the transfer thereof to the register of the county where such transfer is made, otherwise the corporation permitting such transfer shall become liable to pay such tax.

§ 16. Whenever debts shall be proved against the estate of a decedent after distribution of legacies from which the tax has been deducted, in compliance with this act, and the legatee is required to refund any portion of a legacy, a portion of the said tax shall be repaid to him by the executor or administrator if the tax has not been paid into the state or county treasury, or by the county treasurer if it has been so paid.

§ 17. The registers of wills upon their filing with the auditor general the bond hereinafter required shall be the agents of the commonwealth for the collection of the said tax. For services rendered in collecting and paying over the same they shall be allowed to retain for their own use *upon the gross amount collected during any year*, five per centum upon the tax collected if such tax shall amount to a sum of fifty thousand (\$50,000) dollars or less, three per centum on the amounts collected in excess of fifty thousand (\$50,000) dollars and not exceeding one hundred thousand (\$100,000) dollars, two per centum on the amounts collected in excess of one hundred thousand (\$100,000) dollars and not over two hundred thousand (\$200,000) dollars, and one per centum on the amounts collected in excess of two hundred thousand (\$200,000) dollars.

§ 18. Each register shall give bond to the commonwealth in such penal sum as the orphans' court may direct with two or more sufficient sureties for the faithful performance of the duties hereby imposed and for the regular accounting and paying over of the amounts to be collected and received. This bond when executed and approved shall be forwarded to the auditor-general.

Until such bond and security be given the said tax shall be collected by the county treasurer. In such cases all the provisions of this act relating to collection and payment by registers shall apply to the county treasurer.

§ 19. Each register of wills shall on the first Monday of each month make return to the Auditor General and return and payment to the state treasurer of all taxes imposed under this act received stating for what estate paid. All taxes collected by him and not paid over within one month after his quarterly return of the same he shall pay interest at the rate of twelve per centum per annum until paid.

§ 20. The lien of the said tax shall continue until the tax is settled and satisfied and shall be limited to the property chargeable therewith. All such taxes shall be sued for within five years after they are due, otherwise they shall be presumed to have been paid and cease to be a lien as against any purchasers of real estate.

§ 21. In all cases where any amount of such tax is paid erroneously to the register of wills the state treasurer on satisfactory proof rendered to him by said register of wills of such erroneous payment may refund and pay over to the person paying such tax the amount erroneously paid. All such applications for the repayment of such tax erroneously paid in the treasury shall be made within two years from the date of payment except when the estate upon which such tax has been erroneously paid shall have consisted in whole or in part of a partnership or other interest of uncertain value or shall have been involved in litigation by reason whereof there shall have been an over-valuation of that portion of the estate on which the tax has been assessed and paid which over-valuation could not have been ascertained within said period of two years, in such case the application for repayment shall be made to the

state treasurer within one year from the termination of such litigation or ascertainment of such over-valuation.

§ 22. This act does not repeal or effect the tax imposed and collected under the act approved May sixth, one thousand eight hundred eighty-seven, entitled "An act to provide for the better collection of collateral inheritance taxes," its amendments and supplements.

§ 23. All acts or parts of acts inconsistent with this act are hereby repealed.

§ 24. *The provisions of this act are severable and in the event of any provision hereof being declared unconstitutional, it is hereby declared as the legislative intent that such unconstitutional provision shall not affect the validity of any other provision of this act.*

GOVERNOR'S MEMORANDUM

The governor long withheld his approval but finally affixed his signature and the act became a law July 11, 1917.

The governor appended the following memorandum:

Approved: The 11th day of July, 1917.—This bill is approved with the greatest reluctance. I am constrained to do so solely because the necessities of the Commonwealth require the raising of additional revenue.

The Assembly of 1917, which concluded its lengthy session on June 28, appropriated a total of \$87,164,430.73. The responsible fiscal officers of the Commonwealth on December 28, 1916, advised me that the sum available for appropriation at this session was \$70,091,178.22, and on January 2, 1917, I so advised the General Assembly. I am now advised by the responsible fiscal officers of the Commonwealth that, exclusive of unexpended balances, the predictable available sum for appropriation is \$72,558,054.71, and much less if these balances were all drawn from the Treasury.

I repeatedly urged the responsible leaders in charge of the legislative program that it was imperative to provide additional revenue if the business of the State were to be adequately cared for. We had revenue bills prepared imposing a small and entirely reasonable tax upon coal, oil, and natural gas. These natural commodities, the gift of Providence to our people, are being rapidly depleted. They are consumed more largely without than within the State, and our people are denied any revenue from these disappearing sources of wealth. We also had a bill prepared placing a tax of one mill upon the capital stock of manufacturing corporations. This tax would in no important way have affected the State's well-known policy of fostering industry and manufacture. This was not opposed by many leading manufacturers. We had reason to believe that these measures would pass. Had they passed, this unjustifiably drastic tax on direct inheritance would have been unnecessary and would not have been approved.

The bills above-named were passed by a large vote in the House and met an untimely death in the Committees of the Senate.

The same influences that clamored for large appropriations steadily opposed these taxes upon natural resources and upon the capital stock of manufacturing corporations. The Senate Committees thus chose deliberately to tax the estates of poor and rich alike, rather than to tax these natural resources which to-day are selling at such an advanced price as to make the owners abnormally rich in dividends and in profits, and rather than to tax manufacturing corporations now extraordinarily prosperous and abundantly able to pay the proposed tax. The whole procedure was most unfair and against the welfare of all the people.

Some of the increased expenditures authorized by the Assembly are in this national crisis necessary. They cannot be refused or withheld. To reconvene the Assembly to enact revenue producing laws is a costly procedure and might not result in any substantial service to the people since the same potential influences that so carefully guarded certain special interests would again, doubtless, assert themselves. But it may well be that a lesson of this sort is necessary to teach the people the truth.

This direct inheritance tax applies to all property of decedents going to direct heirs. It covers estates of every size, even to the smallest. There are no exemptions. In some States there is a graded tax, with exemptions to the small estates. Under our Constitution this is forbidden, and the approval of this bill is, in its last analysis, based upon the fact that this Assembly has passed a resolution providing for an amendment to the Constitution which will correct the injustices of this measure. This can be and should be adopted by the people in 1919, and the Assembly should then so amend this act as to bring the relief that all fair-minded and unselfish men will approve.

MARTIN G. BRUMBAUGH,

The foregoing is a true and correct copy of the act of the general assembly No. 318.

CYRUS E. WOODS,
Secretary of the Commonwealth.

RHODE ISLAND

Imposes two taxes: First upon the entire estate for the right to transfer; second upon each beneficiary for the right to receive.

Taxes only real estate of non-residents within the state.

First tax.—For right to transfer.

On the entire estate one-half of one per cent in excess of \$5,000.

Second tax:

On each beneficiary—for the right to receive.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Exemption	In excess of ex- emption to \$50,000	\$50,000 to \$250,000	\$250,000 to \$500,000	\$500,000 to \$750,000	\$750,000 to \$1,000,000	In excess of \$1,000,000
Grandparent, parent, husband, wife, child, brother, sister, nephew, niece, son-in-law, daughter-in-law, adopted or mutually acknowledged child, lineal descendant.	\$25,000 to widow or minor child. Others \$25,000, but when two or more of class mentioned they divide exemption and descendants allowed exemption per stirpes, not per capita.	1%	1%	1½%	2%	2½%	3%
All others excepting cor- porations and institu- tions except by charter or laws of state and similar foreign corpora- tions which are exempt altogether.	\$1,000; but descendants take interest in ex- emption per stirpes, not per capita.	5%	6%	7%	7%	7%	8%

LAWS OF 1916, CHAPTER 1339. BECAME A LAW FEBRUARY 22, 1916.**Tax No. 1.—Upon the Right to Transfer.**

Section 1. Imposes a tax upon the entire net estate of every resident decedent and upon real estate of non-residents as above shown for the right to transfer but provides that the exemption of \$5,000 in case of non-resident real estate shall be proportioned to entire estate if the executor or administrator files a sworn inventory. If such statement is not filed no exemption allowed.

§ 2. Provides that in ascertaining the net estate all gains shall be allowed and losses deducted except as to stock and bonds of corporations that accrue during administration as to non-residents only the excess of debts over personal property within the state. This excess is proportioned to the value of the realty as compared with the rest of the estate, provided a full inventory is filed, otherwise only debts chargeable to the real estate are deducted.

§ 3. Provides that the tax imposed by section 1 shall be assessed by the board of tax commissioners who notify the executor or administrator by mail of the amount due. If it is not paid within thirty days it bears interest at 8 per cent from the date of notification and remains a lien until paid with executors and administrators personally liable.

§ 4. Provides for proportionate refund of tax where claims are afterwards proved against estate and gives right of appeal from assessment.

Tax No. 2.

Upon the right to receive.

§ 5. A tax shall be and is hereby imposed upon any transfer by a resident of this state or of any real property within the state, or any tangible or intangible personal property or interest therein or income therefrom, and by a non-resident of this state of any real property within the state or interest therein, to any person or persons, in trust or otherwise as a tax upon the rights to receive, in the following cases:

(1) When the transfer is under a will or by the statutes of descent and distribution of this state.

(2) When the transfer is made by deed, grant, bargain or gift, without valuable and adequate consideration, and in contemplation of the death of the grantor, vendor or donor or intended to take effect in possession or enjoyment at or after such death. Such tax shall be imposed when any such person becomes beneficially entitled, in possession or expectancy to any property or interest therein or the income therefrom by any such transfer whether made before or after the passage of this act.

(3) Taxes the exercise of a power of appointment by the donee of a power, and in default of its exercise taxes the succession of the beneficiary who receives the property in default as though it passed under the will of the donee of the power.

(4) Whenever any person during his life shall appoint a trustee naming himself or others as beneficiaries, and providing for the administration of said trust after his death or providing for a termination of said trust and a distribution of said trust estate or any part thereof at his death, a transfer taxable under the provisions of this act shall be deemed to take place upon the death of the creator of the said trust.

(5) Dower and curtesy in property located within the state shall be deemed to be interests in real property subject to the tax imposed by this section.

(6) Provides that the tax shall be assessed by the board of tax commissioners and holds all executors, administrators and trustees personally liable, requires notice to them by mail of the amount of the taxes and unless an appeal is taken the amount so assessed is final. Makes the tax a lien upon the property transferred or acquired in substitution therefor but not against *bona fide* purchasers for value. The lien may be released by payment of the tax or filing a bond as provided in section 11. The heir, devisee or donee are also made personally liable.

§§ 7-9. Prescribe the rates and exemptions shown in the foregoing table.

§ 10. Makes taxes imposed by section 5 due six months after executor or administrator has filed his bond and allows a discount of 4 per cent if they are paid within that time. If not paid within nine months interest charged at 8 per cent which may be reduced at 6 per cent in case of unavoidable delay from accrual to time when cause of delay is removed, after that 8 per cent. In case of trust deeds taxed under subdivision 4 of section 5 the tax is due when the amount thereof is certified by the board of tax commissioners and if paid within thirty days thereafter a discount of 4 per cent is allowed, after the thirty days' interest at 8 per cent is charged.

§ 11. Provides that if remaindermen wish to defer payment until they receive the property they may file a bond, with the approval of the board of tax commissioners in three times the amount of the tax conditioned for the payment of the tax with interest at 4 per cent from date of accrual. The bond must be renewed every five years and the obligor undertakes to notify the board of tax commissioners when he comes into actual possession of the property. The filing and acceptance of the bond discharges the lien of the tax and frees personal representatives from liability.

§ 12. Provides for a proportionate refund of the tax when claims have been proved against the estate after distribution.

§ 13. Provides for the computation of life estates and remainders on American experience tables at rate of 5 per cent.

§ 14. Provides that no allowance shall be made for contingencies or conditions that may defect, diminish or abridge the estate of one presently entitled in fixing its value but refund is made if the event happens but this does not apply to a life estate which may be diminished or defeated by the act of the beneficiary, such estates are taxed as if there were no such possibility.

§ 15. Provides that the tax shall be fixed at the lowest possible rate on contingent remainders, but if the remaindermen who ultimately succeed are taxable at a higher rate they must then pay the difference.

§ 16. Provides that where the tax has not been collected or has been suspended on contingent remainders they shall be taxed at full cash value when they fall in without deducting value of expired life interest.

§ 17. Taxes, bequests to executors in lieu of commissions on the excess over reasonable value of services.

§ 18. Provides that unless the will directs the tax to be paid from the residue as an expense of administration and that residue is sufficient, the executor or administrator must deduct the tax from the legacy if in money and shall not deliver any specific legacy or property until the tax has been paid thereon by the legatee. If the legacy is charged on real estate the heir must deduct the tax, the tax remains a lien and its payment may be enforced in the same manner as the legacy. If money is given for a limited period the tax must be deducted from the whole amount, but if property is so given the board of tax commissioners must make an apportionment among the beneficiaries.

§ 19. Provides for settlement and compromise of tax claims by the board of tax commissioners with the approval of the attorney-general.

§ 20. Provides for suspending the whole or proportionate part of tax where claims against the estate are in litigation.

§ 21. Gives power of sale for payment of the tax in the same way as to pay debts.

§ 22. Requires the executor or administrator within thirty days to file an inventory on oath of the fair cash value of the estate and within one year thereafter a further sworn statement showing gain or loss in value during settlement and the amounts paid for funeral expenses, administration and the support of a widow and the family of decedent as fixed by the probate court. Trustees under taxable trusts created by decedent must file similar statements. Upon application the board of tax commissioners may extend the time for filing such statements.

§ 23. Requires probate clerks to notify the board of tax commissioners of the granting of letters and fixes the fees of such clerks.

§ 24. Provides that if the board of tax commissioners is dissatisfied with the inventory they may summon the executor or administrator to furnish further information. They then appraise the estate or appoint an appraiser before whom the usual proceedings are held.

§ 25. Imposes a penalty for failure to furnish information as to estates by persons required to do so by the act.

§ 26. Provides for appeal.

§ 27. No banking association organized under the laws of the United States and located within this state, no corporation incorporated within this state, and no unincorporated association, joint stock company or business trust having certificates representing shares of stock and carrying on business in this state shall record a transfer of its stock made by any executor, administrator or trustee, or issue a new certificate for any such share of its stock at the instance of any executor, administrator or trustee, or transfer any registered bond or other registered evidence of indebtedness at the instance of any executor, administrator or trustee until a permit authorizing such transfer has been issued by the board of tax commissioners and filed with the said corporation, association, company or trust making such a transfer before a permit authorizing such transfer as aforesaid has been issued shall be liable for any tax which may be assessed on account of the bequest or gift of such stock, bond or other evidence of indebtedness, together with the interest thereon to be collected in an action to be brought by the general treasurer. The board of tax commissioners shall not issue such a permit until all taxes imposed on account of such bequest or gift has been paid or the payment thereof secured by bond or deposit as herein before provided.

§ 28. The amount due upon the claim of any creditor against the estate of a decedent arising under a contract made after the passage of this act, if payable by the terms of such contract at or after the death of the deceased shall be subject to the same tax imposed by section 5 of this act upon a legacy of like amount. The value of net estates of decedents or the value of legacies or distribution shares in the estate of decedents, for the purposes of taxation

under the provisions of section 1 and section 5 of this act, shall not be diminished by reason of any claim against the estate based upon such a contract except in so far as it may be shown affirmatively by competent evidence that such a claim was legally due and payable in the lifetime of decedent.

§ 29. Provides that no final accounting shall be allowed unless the tax is shown to have been paid or a bond filed as provided.

§ 30. Except as otherwise provided the value of all estates is to be appraised as of the date of death.

§ 31. If no will or administration has been applied for within three months the tax commission may move to fix the tax or apply for administration.

§ 32. Defines the word "person" to include corporations, associations, joint stock companies and business trusts.

§ 33. Sections 20 to 32 inclusive of this act shall apply to the taxes imposed under the provisions of section 1 and section 5 of this act.

§ 34. This act shall take effect upon its passage and may be cited as "The Inheritance Tax Act of 1916."

Prior statutes: None.

SOUTH CAROLINA

Imposes no inheritance tax.

SOUTH DAKOTA

Taxes property of non-residents within the state.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount exempted	Graded rates				
		In excess of exemption up to \$15,000	\$15,000 to \$30,000	\$30,000 to \$50,000	\$50,000 to \$100,000	All in excess of \$100,000
Wife or lineal issue.....	\$10,000	1%	1½%	2%	2½%	3%
Husband, lineal ancestor adopted or mutually acknowledged child and its issue.	Lineal ancestor, \$3,000; others, \$10,000.	1½%	2½%	3%	3½%	4½%
Brother or sister and their descendants, son-in-law, daughter-in-law.	\$1,000	3%	4½%	6%	7½%	9%
Aunt or uncle or their descendants.	\$250	4%	6%	8%	10%	12%
Hospitals, academies, colleges, universities, seminaries of learning, churches and charitable institutions.	\$2,500	5%	7½%	10%	12½%	15%
All other except.....	\$100					
Property transferred to county, town or municipal corporations within the state for public purposes.	All exempt....	No tax				

Proviso as to exemptions:

Provided that if any of the persons above named to whom are granted such exemptions shall receive from the decedent by the same transfer property outside the jurisdiction of this state, and upon which no inheritance tax is collectable by this state which property is exempt from an inheritance tax in the

jurisdiction where located, such person shall be entitled to only such part of the exemption herein provided for as such exemption exceeds the value of the property outside the jurisdiction of the state received by him by such transfer.

LAWS 1915, CHAPTER 217, WHICH SUBSTANTIALLY RE-ENACTS LAWS 1913, CHAPTER 243, AS TO RATES AND EXEMPTIONS. BECAME A LAW MARCH 12, 1915.

Section 1. A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association or corporation, except county, town or municipal corporation, within the state, for strictly county, town or municipal purposes, in the following cases:

(1) When the transfer is by will or by intestate laws of this state from any person dying possessed of the property while a resident of the state.

(2) When a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a non-resident of the state at the time of his death.

(3) When the transfer is of property made by a resident or by a non-resident when such non-resident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

Such tax shall be imposed when any such person or corporation become beneficially entitled in possession or expectancy to any property or the income thereof, by any such transfer whether made before or after the passage of this act.

Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the person or corporation thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

§ 2. Such tax after the taking effect of this act, whether same accrued prior or subsequently to the taking effect thereof, shall be and remain a lien upon the property passed or transferred until paid except where the transfer is by deed or grant in the hands of a *bona fide* purchaser or encumbrancer without notice. In such case a certified copy of the application for probate of the will or estate of the deceased, or a certified copy of the application for a determination of inheritance taxes may be recorded in the office of the register of deeds of the county where any real property described therein is situated, which record shall thereafter be deemed to be notice of such taxes to subsequent purchasers and encumbrances of said real estate, which record may be discharged by recording the certificate of the county treasurer to that effect, or by recording a certified copy of the order of the county court to that effect. The person to whom the property passes or is transferred and all administrators, executors and the trustees of every estate shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed.

§ 3. The tax so imposed shall be computed upon the true and full market value in money of such property less any indebtedness (except expenses of administration) chargeable against said property.

The rest of the section prescribes the rates and exemptions shown in the foregoing table.

§ 4. Gives the county court issuing letters jurisdiction in all transfer tax matters.

§ 5. Provides that all taxes accrue at death and are payable as soon as amount thereof is determined, except in case of contingent remainders, whose value cannot be fixed, which are due when the recipient becomes beneficially entitled.

§ 6. Gives the tax commission general charge of the collection of inheritance taxes, who may appoint one of their number to have special charge thereof and make investigations; makes the attorney-general and his assistants legal advisers of the commission and requires the state's attorney to appear for the commission upon request in tax litigations. Requires the tax commission to prepare forms and blanks to be used in inheritance tax matters.

§ 7. Requires the executor, or administrator to file a sworn inventory within thirty days of his appointment, or the court upon application may extend his time.

§ 8. Authorizes the county treasurer, if he has reason to believe that a transfer in contemplation of death has been made, to proceed to collect the tax.

§§ 9, 10 and 11. Provide for hearings before the county court in transfer tax matters upon due notice and appeals thereon.

§ 12. Provides for the computation of life estates and remainders by American experience tables on the basis of 5 per cent. Where the transfer is in trust and the right of the beneficiary can be valued the tax is presently imposed. Where an estate for life or years can be divested by act or omission of legatees it is to be valued as if there were no possibility of such divesting. In case of contingent remainders the tax is imposed at the highest possible rate, with provision for a refund if they prove to be due at a lower rate on the happening of the contingency. No allowance is made for any contingent encumbrance which may defeat or abridge the estate of a beneficiary, but a proportionate refund is provided in case the estate is in fact defeated or abridged. The increase of an estate during life tenancy is charged in valuation of the estate of a remainderman, and no allowance or deduction is made for the intermediate life estate upon the falling in of a remainder where the taxation has been suspended or no proceedings have been brought to collect the tax.

§§ 13 to 16. Provide for the collection of delinquent taxes.

§ 17. Provides for receipts which must be produced on final accounting.

§ 18. If such tax shall not be paid within one year from the date of the death of the decedent, interest shall be collected thereon at the rate of 7 per centum from the date of the death of the decedent, unless, by reason of claims against the estate necessary litigation or other unavoidable cause of delay, such tax cannot be determined as herein provided; in such case interest at the rate of 6 per centum per annum shall be charged upon such tax from the date of the death of the decedent until the cause of delay is removed, after which 7 per centum shall be charged.

If the tax shall be paid in full prior to the expiration of one year from the date of the death of the decedent no interest shall be charged.

§ 19. Provides for a refund of taxes erroneously paid, if the application is made within three years of such payment.

§ 20 (1) If a foreign administrator, or executor shall assign or transfer any stock or obligation in this state, standing in the name of the decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the county treasurer of the county where such stock or obligation is situated on the transfer thereof, and no such assignment or transfer shall be valid until such tax is paid.

(2) If any non-resident of this state dies owning personal property in this state, such property may be transferred or assigned by the personal representative of the decedent, only after such representative shall have procured a certificate from the tax commissioner consenting to the transfer of such property. Such consent shall be issued by the tax commission only in case there is no tax due hereunder; in case there is a tax, when the same shall have been paid to the county treasurer of the county where such personal property or some portion thereof is situated.

(3) Provides for application to the tax commission by non-resident personal

representative or beneficiary for transfer of property having its *situs* in the state, setting forth the nature and value of the property; and also, if required, of all other property of decedent outside the state, with a schedule of debts and funeral expenses and a certified copy of the will, or if intestate an affidavit as to the names, ages and residences of the beneficiaries and their relationship to the decedent.

(4) From this information and any other it may secure the tax commission must determine the amount of the tax. On its payment or on certificate that none is due a consent to the transfer of the property is issued.

(5) Forbids any corporation organized under the laws of the state to make any transfer on its books without such consent. If it does so it is liable for the tax, plus the per cent, by parties aggrieved.

§ 21. No safety deposit company, bank or other institution, person or persons holding assets or securities of a decedent, shall deliver or transfer the same to the executor, administrator or legal representative of such decedent, or upon their order or request, unless notice of the time and place of such transfer shall be given to the county treasurer of the county, at least ten days prior thereto, to examine such securities or assets at the time of such delivery or transfer. If upon such examination the county treasurer shall for any cause deem it advisable that such securities or assets should not be immediately transferred or delivered, he may forthwith notify, in writing, such bank, company, institution or person to defer delivery or transfer thereof for a period not to exceed ten days from the date of such notice, and thereupon it shall be the duty of such company, bank, institution or person to delay the delivery or transfer to the time stated in such notice or until the revocation thereof within said ten days. Failure to serve the notice first above mentioned, or defer the delivery or transfer of such securities or assets for the time stated in the second of said notices shall render such company, bank, institution or person liable to the payment of the tax due upon said security or assets, pursuant to the provisions of this act.

§ 22. Provides for composition and settlement of tax claims with estates of non-resident decedents or for the filing of a bond to pay the tax.

§ 23. Defines various words used in the act.

§ 24. Repeals the act of 1913, with a saving clause as to rights of the state.

§ 25. Applies the proceedings provided to all pending litigation.

Prior statutes: L. 1905, ch. 54; L. 1913, ch. 243.

TENNESSEE

Taxes all property of non-residents.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount of exemption	Above exemption up to \$20,000	In excess of \$20,000
Father, mother, husband, wife, children and lawful lineal descendants.	\$5,000	1%	1½%
Charitable and religious institutions and purposes.....	All	No tax	.....
All others including adopted children.....	\$250	5% on all	.....

LAWS 1893, CHAPTER 174, AS AMENDED BY LAWS 1907, CHAPTER 479, AND LAWS 1915, CHAPTER 83.

Section 1. All estates — real, personal, and mixed — of every kind whatsoever, situated within this state, whether the person or persons dying seized thereof be domiciled within or out of this state, passing from any person who

may die seized or possessed of such estates, either by will or under the intestate laws of this state, or any part of such estate or estates, or interest therein, transferred by deed, grant, bargain, gift, or sale, made in contemplation of death, or intended to take effect in possession or enjoyment after the death of the grantor or bargainor to any person or persons or to bodies corporate or politic, in trust or otherwise,

The rest of the section shows the rates and exemptions of the foregoing table. The amendment of 1909 added the direct inheritance tax, and that of 1915 exempted the religious and charitable bequests.

The section further provides: and all owners of such estates and all executors and administrators and their sureties shall only be discharged from liability for the amount of such taxes or duties, the settlement of which they may be charged with, by having paid the same over for the use of the state, as hereinafter directed:

§ 2. Taxes bequests to executors in lieu of commissions above a reasonable compensation.

§ 3. Provides that the tax on remainders shall not accrue until the termination of the life estate; but the owner has the right to pay the tax before coming into possession, in which case the value is fixed as of the time of payment after deduction value of life estate. The tax remains a lien on estate and in case of personalty must be paid within one year or security for payment given.

§ 4. Provides for a discount of 5 per cent if the tax is paid within three months after death of decedent, makes the tax due within one year, and charges interest at 6 per cent thereafter.

§ 5. Requires the executor or administrator to deduct the tax or collect it from the beneficiary, to whom property must not be delivered unless tax is paid, and gives power of sale in default of payment.

§ 6. Provides for an application to the court for an apportionment of the tax among the beneficiaries where an estate is given for life or years upon a condition or contingency.

§ 7. Requires the heir to deduct the tax where the legacy is charged on real estate, makes it a lien, and provides for its enforcement in the same manner as the legacy.

§ 8. Makes it the duty of executors and administrators to give information to the clerk of the county court of any real estate of decedent subject to the tax.

§ 9. Provides for receipts which must be produced on final accounting.

§ 10. Whenever any foreign executor or administrator or trustee shall assign or transfer any stocks or loans in this state standing in the name of the decedent or in trust for a decedent which shall be liable for the collateral inheritance tax, such tax shall be paid on the transfer thereof, to the clerk of the county court where such transfer is made; otherwise the corporation or person permitting such transfer shall become liable to pay such tax.

§ 11. Provides for a proportionate refund of the tax when debts have been proved against the estate after distribution.

§ 12. Provides for the appointment of an appraiser, appraisal, report and appeal. Life estates and remainders are computed on the Carlisle tables. (Six per cent is the basis used.)

§ 13. Makes it a misdemeanor for an appraiser to accept a fee or reward.

§§ 14 to 26. Make the usual provisions for records and the enforcement of delinquent taxes, which cease to be a lien on real estate as against purchasers if not sued for within five years.

TEXAS

Taxes only collaterals and strangers.

Taxes all property of non-residents within the state when passing to collaterals and strangers.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount exempt	Rates of tax					
		Above exemption up to \$10,000	\$10,000 to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Father, mother, husband, wife, direct lineal descendants.	All	No tax.					
Public corporations, charitable, educational or religious purposes within the State.	All	No tax.					
Lineal ascendant, brother, sister or their lineal descendants.	\$2,000	2%	2½%	3%	3½%	4%	5%
Uncle, aunt or their lineal descendants.	\$1,000	3%	4%	5%	6%	7%	8%
All others.....	\$500	4%	5½%	7%	8½%	10%	12%

LAWS OF 1907, CHAPTER 21, AS AMENDED BY CHAPTER 166, LAWS OF 1917.

Section 1. All property within the jurisdiction of this state, real or personal, corporeal or incorporeal, and any interest therein, whether belonging to inhabitants of this state or not, which shall pass, absolutely or in trust, by will, or by the laws of descent of this or any other state, or by deed, grant, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall upon passing to or for the use of any person except the father, mother, husband, wife or direct lineal descendants of the testator, intestate, grantor or donor, or any public corporation or charitable, educational or religious organization within this state when such bequest, gift or devise is to be used for charitable, educational or religious purposes within this state, be subject to a tax for the benefit of the state, as follows:

The section then prescribes the rates and exemptions as shown in the foregoing table.

§ 2. Provides for the valuation of life estates and remainders upon actuaries' combined experience tables on the basis of 4 per cent.

§ 3. Taxes bequests to executors in lieu of commissions in excess of a reasonable compensation.

§ 4. Requires the executor or administrator to file an inventory within three months of his appointment under penalty of \$1,000.

§ 5. If no probate proceedings have been brought on a taxable estate within three months after death the county court must appoint an administrator.

§ 6. Provides for the appointment of appraisers or that the county judge may make the appraisal himself.

§ 7. Requires the county judge to assess the tax upon the appraisal, makes the tax a lien with interest from the date of death unless paid within six months, when no interest is charged.

§ 8. Requires the executor or administrator to deduct the tax if bequest or share is in money; if in property to collect it from the beneficiary; gives him power of sale, and forbids delivery to beneficiary until tax is paid.

§ 9. Where a legacy is charged on real estate the heir is required to deduct the tax, which remains a lien and may be enforced in the same manner as the legacy.

- § 10. Provides for tax receipts.
- § 11. Provides for actions to recover delinquent taxes.
- § 12. Requires payment of taxes by county collectors to the state treasurer.
- § 13. Provides for deposit of the tax moneys in the general revenue fund.
- § 14. Provides for a proportionate refund where debts have been proved against the estate after distribution.
- § 15. Requires that final accounting shall show payment of the tax.
- § 16. Provides that administration may be dispensed with where an inventory is filed and tax proceedings had.

Chapter 166, Laws of 1917, reads as follows:

The comptroller of public accounts of the state of Texas is hereby authorized and empowered, and it is made his duty to appoint and contract with some suitable person or persons whose duty it shall be to look specially after, sue for and collect the taxes provided by this chapter; such person in no event to receive under such contract more than ten (10) per cent of the amount of such taxes collected hereunder, as compensation. It shall be the duty of such person, so contracted with, to make written report to the county judge of each county in which he may be appointed and employed to assist in the enforcement of this law, of each estate upon which such tax may be due, or may become due, *as soon as possible after the death of any person owning such estate*. Such report shall state probable value of such estate, its character and location, if known, and the names of the persons known to be interested therein.

The amount of compensation due such person shall be paid by the collector of taxes out of the taxes collected on property belonging to such estate, and such payment shall be deducted from said taxes by said collector and reported to the comptroller.

It shall be the further duty of such person to aid in every possible way in the collection of such taxes.

It shall be the duty of the county judge of said county upon his own motion or petition of such appointee of said comptroller, to appoint an administrator of every estate subject to taxation under the provisions of this chapter where no application for letters testamentary or of administration thereon is made within three (3) months after the death of the person owning such estate taxable hereunder. The person appointed by the said comptroller may represent the state in any proceeding necessary under the provisions of this chapter to enforce the collection of such taxes but without other compensation than as provided in his original employment.

UTAH

Taxes all property of non-residents within the state.

TABLE OF RATES AND EXCEPTIONS

CLASS OR RELATIONSHIP	Amount exempt	On entire net estate above \$10,000 up to \$25,000	On entire net estate in excess of \$25,000
The court apportions the tax among all beneficiaries without exception.	On entire estate; one exemption of \$10,000.	3%	5%

TITLE 36, COMPILED LAWS OF UTAH, OF 1907, AS AMENDED BY CHAPTERS 28 AND 29, LAWS OF 1915, AND LAWS OF 1917.

NOTE: The 1917 amendment did not change rates or exemptions.

§ 1220-x. Property Subject to Tax. Computation. Lien. Deductions.—All property within the jurisdiction of this state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible

or intangible, which shall pass by will or by statutes of inheritance of this or any other state, or by deed, grant, bargain, sale, or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after the death of the grantor, vendor, or donor, to any person in trust or otherwise, shall be subject to the following tax, after the payment of all debts, for the use of the state: Three per cent of its market value in excess of \$10,000.00, and not exceeding \$25,000.00, and 5 per cent of its market value in excess of \$25,000.00; and all administrators, executors, and trustees, and any such grantee under conveyance, and such donee under a gift made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them respectively, except as herein otherwise provided, with lawful interest as hereinafter set forth, until the same shall have been paid. The tax aforesaid shall be and remain a lien on such estate from the death of the decedent until paid. In determining the amount of tax to be paid under the provisions of this section, the debts of the estate shall first be deducted, and the remainder shall be the net estate. Upon all that portion of the net estate in excess of \$25,000.00 the tax of 5 per cent shall be computed. Upon all that portion of the net estate in excess of \$10,000.00 and not exceeding \$25,000.00 the tax of 3 per cent shall be computed; and the court shall determine the amount of tax to be paid by the several devisees, legatees, grantees, or donees of the decedent.

§ 1220-xl. The term "debts," as used in this chapter, shall include, in addition to debts owing by decedent at the time of his death, the local or state taxes due from the estate prior to his death, a reasonable sum for funeral expenses, the court costs, the statutory fees of executors, administrators, or trustees, and no other sum; but said debts shall not be deducted unless the same are approved and allowed, within fifteen months from the death of decedent, as established claims against the said estate, unless otherwise ordered by the judge of the proper county, or, in case of foreign estates where the property within this state consists of personal property only, allowed by the attorney-general.

§§ 2 to 7. Provide for the appointment of appraisers, their compensation and duties, with the usual regulations as to notice, hearings, appeal and reappraisal.

§ 8. Requires appraisement within three months and payment of the tax within fifteen months after death, or the property will be decreed to be sold.

§ 9. Provides for the valuation of life interests in real property and their present taxation on the expiration of such life estate, the remainder is valued less any betterments by the remainderman, and the tax then becomes due and payable within sixty days. In case of personalty the court apportions the tax on the value of the life estate and the remainder, and it is then presently payable.

§ 10. Taxes bequests to executors in lieu of commissions when in excess of reasonable compensation.

§ 11. Requires the heir to deduct the tax when a legacy is charged on real estate, makes it a lien, and provides for enforcement in the same manner as the legacy.

§ 12. Requires the executor or administrator to deduct the tax or collect it from the beneficiary, and property may not be delivered until the tax is paid.

§ 13. Makes taxes payable within fifteen months; after that 8 per cent is charged. The time may be extended and interest abated in a proper case by the court, or in case of non-residents by the attorney-general.

§ 14. Provides for proceedings to sell real estate to pay the tax in the same way as to pay debts.

§ 15. Provides that final accounting must show payment of tax before settlement allowed.

§ 16. Gives district court issuing letters jurisdiction in tax proceedings.

§ 17. Empowers the state treasurer to demand information from executors and administrators.

§ 18. Provides for the keeping of an inheritance tax book by the clerk of the district court.

§ 19. Provides for inventory by executors and administrators, and the keeping of a real estate lien book.

§ 20. Authorizes the court to extend the time of appraisement, but not for more than three months.

§§ 21 to 25. Prescribe the duties of the court clerk and provide for collection of delinquent taxes by the attorney-general.

§ 26. No safe deposit company, bank, or other institution, person, or persons holding securities or assets of the decedent shall deliver or transfer the same to the executor or administrator or legal representative of said decedent unless notice of the time and place of such intended transfer be served upon the state treasurer at least five days prior to the transfer thereof, or unless the tax for which such securities or assets are liable under this title shall be first paid. It shall be lawful for, and the duty of, the state treasurer personally, or by any person by him duly authorized, to examine such securities or assets at the time of such delivery or transfer. Failure to serve such notice upon the state treasurer, or to allow such examination on the delivery of such securities or assets to such executor, administrator, or legal representative before said tax is paid shall render such safe deposit company, trust company, bank, or other institution, person, or persons liable for the payment of the taxes due upon such securities or assets as provided in this title.

§ 27. Where any property belonging to a foreign estate is subject to the payment of an inheritance tax in this state, such tax shall be assessed upon the market value of such property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state, and in the event that the executor, administrator or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction, statements in writing exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be in affidavit form and sworn to by such executor, administrator or trustee, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property within this state, as the value of the property within this state bears to the value of the entire estate; provided, that in all such cases where the property within this state consists of personal property only, the statements hereinbefore provided for shall be filed with the attorney-general.

§ 28. Whenever any property, real or personal, within this state, belongs to a foreign estate, said foreign estate passes in part exempt from the inheritance tax, and in part subject to such inheritance tax, and it is within the authority or discretion of the foreign executor, administrator, or trustee administering the estate to dispose of the property not specifically devised to direct heirs or devisees in the payment of the debts owing by the decedent at the time of his death or in the satisfaction of legacies, devisees, or trusts given to direct and collateral legatees or devisees, or in payment of the distributive shares of any direct and collateral heirs, then the property within the jurisdiction of the state, belonging to such foreign estate, shall be subject to the inheritance tax imposed by this title, and the tax due thereon shall be assessed as provided in the next preceding section of this title, and with the same proviso respecting the deduction of the proportionate share of the indebtedness, as therein provided.

§ 29. If a foreign executor, administrator or trustee shall assign or transfer any corporate stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the state treasurer on or before the transfer thereof; otherwise the corporation permitting its stock to be so transferred shall be liable to pay such tax, and it is the duty of the state treasurer to enforce the payment thereof.

§ 30. Whenever an estate charged, or sought to be charged, with the inheritance tax, is of such a nature or is so disposed that the liability of the estate is doubtful, or the value thereof cannot with reasonable certainty be ascertained under the provisions of law, the state treasurer may, with the approval of the

attorney-general, which approval shall set forth the reasons therefor, compromise with the beneficiaries or representatives of such estates, and compound the tax thereon; but said settlement must be approved by the district court or judge of the proper court, and after such approval, the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate.

§ 31. This title shall apply to all pending estates which are not closed, and the property subjected by this title to the said tax is liable to the provisions incorporated in this title.

VERMONT

Taxes only real estate of non-residents.

Until April 12, 1917, Vermont only taxed collaterals and strangers.

TABLE OF RATES UNDER STATUTE OF 1917

Became a law, April 12, 1917

CLASS OR RELATIONSHIP	Exemption	Rates			
		\$10,000 to \$25,000	\$25,000 to \$50,000	\$50,000 to \$250,000	In excess of \$250,000
Husband, wife, child, father, mother, or grandchild of a descendant, son-in-law, daughter-in-law, adopted or mutually acknowledged child, step-child, other lineal descendant.	\$10,000	1%	2%	4%	5%
All others, excepting charities named in second table.	None	5% on all.			

TABLE OF RATES AND EXEMPTIONS PRIOR TO APRIL 12, 1917

CLASS OR RELATIONSHIP	Exemption	Rate of tax
Father, mother, husband, wife, lineal descendant, the wife or widow of a son, the husband of a daughter, a step-child, a child adopted as such during his minority in conformity with the laws of this state, a child of a step-child or of such adopted child, bishop in his ecclesiastical capacity for religious uses within this state, or a city or town for cemetery purposes; and every charitable, educational or religious society or institution other than one created and existing under and by virtue of the laws of this state and having its principal office herein.	All	No tax.
All others	None	5% on all.

NO. 52, LAWS 1917.

An Act in Addition to Chapter 38 of the Public Statutes, Relating to the Taxation of Inheritances and Taxable Transfers.

It is hereby enacted by the General Assembly of the State of Vermont:

Section 1. The husband, wife, child, father, mother or grandchild of a decedent, the wife or widow of a son or the husband of a daughter thereof, a child adopted during its minority by a decedent during his life under the laws of this state, a step-child of a decedent, a child of such adopted child or of such step-child, or other lineal descendants of a decedent who receives from such decedent, in trust or otherwise, a legacy or distributive share consisting

of or arising from property or an interest therein owned by such decedent at his decease and passing by will, the laws of descent or a decree of a court in this state, shall, except as otherwise provided, pay to the state a tax at the following rates:

On the excess of its value over ten thousand dollars and not exceeding twenty-five thousand dollars, at 1 per cent;

On the excess of its value over twenty-five thousand dollars and not exceeding fifty thousand dollars, at 2 per cent;

On the excess of its value over fifty thousand dollars, and not exceeding two hundred fifty thousand dollars, at 4 per cent;

On the excess of its value over two hundred fifty thousand dollars, at 5 per cent.

§ 2. The provisions of this act imposing a tax upon legatees or distributive shares passing to persons enumerated in the preceding section shall not apply to legacies or shares passing from the estates of persons who deceased prior to the date whereon this act takes effect.

§ 3. The two preceding sections shall be construed to be in addition to and forming a part of chapter 38 of the Public Statutes (chap. 48 of the General Laws, as proposed). Unless inconsistent with or repugnant to the context of this act, all provisions of said chapter 38 (chap. 48, G. L.), and of all acts or parts of acts in amendment thereof or in addition thereto shall be construed to apply to the taxes assessed in the first section of this act with the same force and effect as if such last named section were a part of said chapter.

Approved April 12, 1917.

Prior to an act of 1917 the Vermont Inheritance Statute is summarized as follows:

PUBLIC STATUTES OF 1906, AS AMENDED BY LAWS OF 1912, CHAPTER 60

§ 822. After making the above exemptions prescribes as to all others: that shall receive in trust or otherwise a legacy or distributive share consisting of or arising from real estate within this state or any interest therein owned by such decedent at the date of his death, and passing by will, the laws of descent, or a decree of court in this state, or that shall receive in trust or otherwise a legacy or distributive share consisting of or arising from personal estate or any interest therein so passing from such decedent who at the date of his death was an inhabitant of this state and then owned such personal property shall, except as otherwise provided in this chapter, pay to the state a tax of five per cent. of the value in money of such legacy or distributive share.

§ 823. Every person, unless one of a class exempted in the preceding section, who acquires title to real estate within this state or any interest therein by deed, grant, or gift, except in case of a *bona fide* purchase for a full consideration in money or money's worth, made or intended to take effect in possession or enjoyment upon or after the death of the grantor or donor; and every such person who thus acquires title to personal estate or any interest therein from a deceased person who at the date of his death was an inhabitant of this state and then owned such property, shall pay to the state the same tax that he would have been required to pay had such estate or interest passed to him from such deceased person by will, the laws of descent, or decree of a court in this state. Such tax shall be a first lien on the real or personal estate thus conveyed, until such tax is paid in full.

§§ 824-825. Are repealed by chapter 60, L. 1912.

§ 826. Exempts bequests to maintain burial costs.

§ 827. Requires the executor or administrator to deduct the tax or collect it from the heir or legatee.

§ 828. Gives power of sale to pay the tax in the same manner as to pay debts.

§ 829. Makes the tax a lien on property and forbids its delivery to beneficiary until the tax is paid.

§ 830. Makes the executor or administrator personally liable and requires him to collect the tax from heir to real estate.

§ 831. Requires the heir to deduct the tax when a legacy is charged on real estate makes it a lien and provides for its enforcement.

§ 832. Requires that final accounting shall show that all taxes have been paid.

§ 833. Gives the probate court granting letters jurisdiction in transfer tax proceedings.

§§ 834-837. Provide for appeals proceedings in the supreme court hearings and costs.

§§ 838-841. Provide that the probate court may value the estate and for proceedings on such valuation.

§§ 842-847. Provide for valuation by appraisers and proceedings thereon.

§§ 848-852. Provide for valuation by agreement between foreign personal representatives and the commissioner of state taxes. These sections now apply only to real estate within the state.

§§ 853-857. Provide for the valuation of life estates and remainders upon American experience tables with the rate of interest at $3\frac{1}{2}$ per cent.

§ 858. Taxes bequests to executors in lieu of commissions in excess of reasonable compensation.

§ 859. Provides for receipts.

§ 860. Provides for refunding taxes erroneously paid.

§§ 861-869. Provide for the payment of taxes which are due two years after death unless a legacy shall have been paid before them in which case the tax must be paid on delivery. The probate court may extend the time on good cause shown. Taxes on grants and gifts in contemplation of death are due three months after death of donor or when beneficiary takes possession if he does so before the three months, and such beneficiaries must file an inventory of the property under penalty of not more than 10 per cent. nor less than 5 per cent. of its value to be recovered in a civil action. Taxes not paid when due bear interest from that date.

§§ 870-871. Provide for reports to the commissioner of state taxes by the register of probate as to estates liable to the tax.

§ 872. Authorizes the commissioner of state taxes to apply for administration if no proceedings have been brought within four months after death.

§ 873. Requires the register of probate to notify the commissioner of such cases.

The remaining sections, 874 to 901, refer to the collection of taxes on non-residents and are now obsolete as the amendment of 1912 imposes such taxes only on real estate within the state.

VIRGINIA

Taxes property of non-residents within the State.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount of exemption	Graded rates			
		In excess of exemption to \$50,000	\$50,000 to \$250,000	\$250,000 to \$1,000,000	In excess of \$1,000,000
Grandparents, parents, husband, wife, brother, sister or lineal descendant.	\$15,000	1%	2%	3%	4%
All others except state, county, municipal, benevolent, charitable, educational or religious purposes which are exempted.	None	5%	10%	15%	20%

VIRGINIA CODE OF 1903, AS AMENDED BY LAWS OF 1910, CHAPTER 148, AND LAWS OF 1916, CHAPTER 484 — (APPROVED MARCH 22, 1916).

§ 44 (a). Where any estate in this commonwealth of any decedent shall pass under a will or the laws regulating descents and distributions to any person or for the use of any person the estate so passing shall be subject to a tax.

The subdivision then prescribes the rates and exemptions as shown in the foregoing table.

(b) The personal representative of such decedent shall pay the whole of such tax, except on real estate, to sell which or to receive the rents and profits of which he is not authorized by the will, and the sureties on his official bond shall be bound for the payment thereof.

(c) Where there is no personal estate, or the personal representative is not authorized to sell or receive the rents and profits of the real estate, the tax shall be paid by the devisee or devisees, or those to whom the estate may descend by operation of law; and the tax shall be a lien on such real estate, and the treasurer may rent or levy upon and sell so much of said real estate as shall be sufficient to pay the tax and expenses of sale, etc.

(d) Such payment shall be made to the treasurer of the county or city in which certificate was granted such personal representative for obtaining probate of the will or letters of administration.

(e) The corporation or hustings court of a city, the circuit court of a county, or city, the chancery court of the city of Richmond, the law and chancery court of the city of Norfolk, or the clerk of the circuit court of a county or city, before whom a will is probated or administration is granted shall determine the collateral inheritance tax, if any, to be paid on the estate passing by will or administration, and shall enter of record in the order book of the court or clerk, as the case may be, by whom such tax shall be paid and the amount to be paid. The clerk of the court shall certify a copy of such order to the treasurer of his county or city and to the auditor of public accounts, for which services the clerk shall be paid a fee of two dollars and fifty cents by the personal representative of the estate. The auditor of public accounts shall charge the treasurer with the tax, and the treasurer shall pay the same into the treasury as soon as collected, less a commission of five per centum. Every personal representative or other party or officer failing in any respect to comply with this section shall forfeit one hundred dollars.

(f) Any personal representative, devisee or person to whom the estate may descend by operation of law, failing to pay such tax before the estate on which it is chargeable is paid or delivered over (whether he be applied to for the tax or not) shall be liable to damages thereon at the rate of ten per centum per annum for the time such estate is paid or delivered over until the tax is paid, which damages may be recovered, with the tax, on motion of the commonwealth, and in the name of the commonwealth against him in the circuit court for the county or in the corporation court of the city wherein such tax was assessed, except that in the city of Richmond, the motion shall be in the chancery court. Such estate shall be deemed paid or delivered at the end of a year from the decedent's death, unless and except so far as it may appear that the legatee or distributee has neither received such estate, nor is entitled then to demand it. All taxes upon said inheritance paid into the state treasury shall be placed to the credit of the public school fund of the commonwealth and shall be apportioned according to school population and be used for the primary and grammar grades.

Prior Statutes: Virginia has imposed a collateral inheritance tax since 1844 and the rate was 5 per cent. on such collaterals under the act of 1903 until the amendment of 1916 which prescribed the graded rates on both direct and collateral successions.

WASHINGTON

Taxes all property of non-residents within the state.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount of exemption	Rate of tax		
Father, mother, husband, wife, lineal descendant, adopted child or its lineal descendant.	\$10,000	1% on all in excess of exemption.		
Bequests for the relief of aged, indigent and poor people, maintenance of sick or maimed; support or education of orphans or indigent children.	All	No tax.		
Collateral heirs to and including the third degree of relationship.	None	Up to \$50,000	\$50,000 to \$100,000	In excess of \$100,000
		3%	4½%	6%
All others.....	None	6%	9%	12%

LAWS OF 1901, CHAPTER 55, AS AMENDED BY LAWS OF 1905, CHAPTERS 93, 114 AND 115; LAWS OF 1907, CHAPTER 217; LAWS OF 1911, PAGE 60; AND LAWS OF 1917, CHAPTER 146.

Note: The 1917 amendments did not change the rates.

Section 1. (Code, § 9182.) All property within the jurisdiction of this state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the statutes of inheritances of this or any other state, or by deed, grant, sale or gift made in contemplation of the death of the grantor or donor, or by deed, grant or sale or gift made or intended to take effect in possession or in enjoyment after the death of the grantor or donor to any person in trust or otherwise, shall, for the use of the state, be subject to a tax as provided for in section 9183, after the payment of all debts owing by the decedent at the time of his death, the local and state taxes due from the estate prior to his death, and a reasonable sum for funeral expenses, monument or crypt, court costs, including cost of appraisement made for the purpose of assessing the inheritance tax, the fees of executors, administrators or trustees, reasonable attorney's fees, and family allowance not to exceed \$1,000, and no other sum, but said debts shall not be deducted unless the same are allowed or established within the time provided by law, unless otherwise ordered by the judge or court of the proper county, and all administrators, executors and trustees, and any such grantee under a conveyance, and any such donee under a gift, made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them, with lawful interest until the same shall have been paid. The inheritance tax shall be and remain a lien on such estate from the death of the decedent until paid.

§ 2. (L. 1911, p. 60.) Prescribes the rates and exemptions of the foregoing table except as to charities which are prescribed by another statute.

§ 3. (Code, § 9184.) Except as to the limitations prescribed in section two from the inheritance tax and real property located outside the state passing in fee from the decedent owner, the tax imposed under section two shall hereafter be assessed against and be collected from property of every kind, which at the death of the decedent owner is subject to, or thereafter, for the purpose of distribution, is brought into this state and becomes subject to the jurisdiction of the courts of this state for distribution purposes, or which was owned by any decedent domiciled within the state at the time of the death of such decedent, even though the property of said decedent so domiciled was situated outside of the state.

§ 4. (Code, § 9185.) In case of any property belonging to a foreign estate, which estate, in whole or in part, is liable to pay a collateral inheritance tax in this state, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction and with the state board of tax commissioners duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property, as the value of the property within this state bears to the value of the entire estate.

§§ 5, 6. (Code, §§ 9186, 9187.) Are repealed by chapter 146, Laws 1917.

§ 7. (Code, § 9188.) Provides for the valuation of life estates and remainders on the basis of the Combined Actuaries' Mortality Tables at 4 per cent. It further provides that remaindermen may defer payment of the tax until they come into possession by filing a bond in the amount of the tax conditioned for its payment within 60 days after coming into possession of the property.

Code, §§ 9188-1 (added by L. 1917). Provides for the present taxation of contingent remainders at the lowest possible rate requiring the transferee to pay the difference if a higher rate proves to be due when the remainder falls in.

§ 8. (Code, § 9189.) Taxes bequests to executors in lieu of commissions above reasonable compensation.

§ 9. (Code, § 9190.) Requires the heir to deduct the tax where a legacy is charged upon real estate, makes the tax a lien and may be enforced in the same way as the legacy.

§ 10. (Code, § 9191.) Requires the executor or administrator to deduct the tax or collect it from the beneficiary and may not deliver property unless the tax is paid.

§ 11. (Code, § 9192.) All taxes imposed by this act shall take effect and accrue upon the death of the decedent or donor. If such tax is not paid within fifteen months from the accruing thereof, interest shall be charged and collected at the rate of eight per centum per annum unless by reason of necessary litigation such tax cannot be determined and paid as herein provided, in which case interest at the rate of eight per centum per annum shall be charged upon such tax from and after the time the cause of such delay is removed. In all cases where a bond shall be given under the provisions of section 9198 interest shall be charged at the rate of eight per centum per annum from and after a period of sixty days from the time that the person or persons owning the beneficial interest come into the possession of same until the payment thereof. (As amended by L. 1917.)

§ 12. (Code, § 9193.) Provides for the appointment of appraisers and the usual proceedings before them.

§ 13. (Code, § 9194.) If a foreign executor, administrator or trustee shall assign any corporate stock, or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the state treasurer on or before the transfer thereof, otherwise, the corporation permitting its stock to be so transferred on its books shall be liable to pay such tax. No safe deposit company, bank or other institution, person or persons, holding any securities, property or assets of any non-resident decedent, shall deliver or transfer the same to any non-resident executor, administrator or representative of such decedent, until after a notice in writing of the time and place of such transfer shall have been duly given the state board of tax commissioners at least ten (10) days prior thereto, and the tax imposed by this act paid thereon, and every such safe deposit company, bank or other institution, person or persons, shall be liable for the payment of such tax.

§ 14. (Code, 9195.) Requires the petitioner in all probate proceedings to furnish a list of heirs or beneficiaries together with an inventory.

§ 15. (Code, § 9196.) Authorizes the court to extend the time for filing the inventory.

§ 16. (Code, § 9197.) Provides for the compounding of doubtful tax claims.

§ 9197-1. When any person dies leaving property within the jurisdiction of the State of Washington, which shall pass by the statutes of inheritance of this or any other state, or by deed, grant, sale or gift made in contemplation of the death of the grantor or donor, or by deed, grant, sale or gift made or intended to take effect in possession or in enjoyment after the death of the grantor or donor, to any person in trust or otherwise, and there has been no application for letters of administration of the estate of such deceased person, or when administration of any estate has been completed without an adjudication of the inheritance tax, the liability of such property for the payment of an inheritance tax may be determined without administration in the manner hereinafter provided.

When any person interested in such property shall deem the same not subject to an inheritance tax, or when he admits the liability for such tax but desires to adjust the same, he may file a petition in the superior court of the proper county to determine the questions arising under the inheritance tax statutes. Such petition shall contain the name and date of death of decedent, the description and estimated value of all property involved, the names and places of residence of all persons interested in the same, and such other facts as are necessary to give the court jurisdiction. The court shall thereupon set a day for hearing said petition and a copy thereof, together with a notice of the time and place of such hearing, shall be served by the petitioner or his attorney upon the state board of tax commissioners and on each person interested in said property, at least twenty days before the date of hearing, if served personally, and if served by publication the service shall be the same as the service of summons by publication in civil actions.

The court shall hear said matter upon the relation of the parties, the testimony of witnesses and evidence produced in open court, and, if it shall be found that the property is not subject to any tax, the court shall make and enter an order determining that fact; but, if it shall appear that the whole or any part of said property is subject to a tax, the same shall be appraised and the tax levied and collected as in other cases. An adjudication by the superior court, as herein provided, shall be conclusive as to the lien of said tax, subject to the right of appeal to the supreme court allowed by the laws of the state. (Added by chap. 146, L. 1917.)

§ 17. (Code, § 9198.) Requires the state board of tax commissioners to take general supervision over the collection of tax claims.

§ 18. (Code, § 9199.) Prescribes the charitable exemptions shown in the table of rates.

WEST VIRGINIA

Taxes all property of non-residents within the state.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount of exemption	Graded rates				
		Above exemption up to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Wife, husband, child, lineal descendant or lineal ancestor.	Widow, \$15,000; others, \$10,000	1%	1½%	2%	2½%	3%
Brother or sister of the whole blood.	None.....	3%	4½%	6	7½%	9%
All others except charitable bequests.	None.....	5%	7½%	10%	12½%	15%
Bequests to be used within the state for education, literary, scientific, religious or charitable purposes or to state, county or municipal corporations for public purposes.	All.....	No tax.				

LAWS OF 1904, CHAPTER 6, AS AMENDED BY LAWS OF 1907, CHAPTER 55; LAWS OF 1909, CHAPTER 63, AND LAWS OF 1913, CHAPTER 25.

Section 1. A tax, payable into the treasury of the state, shall be imposed upon the transfer, in trust or otherwise, of any property, or interest therein, real, personal or mixed, if such transfer be,

(a) By will or by the laws of this state regulating descents and distributions from any person who is a resident of the state at the time of his death and who shall die seized or possessed of the property;

(b) By will or by laws regulating descents and distributions, of property within the state, or within its jurisdiction, and the decedent was a non-resident of the state at the time of his death;

(c) By a resident, or be of property within the state, or within its jurisdiction, by a non-resident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor, bargainor or donor, or intended to take effect in possession or enjoyment at or after such death.

(d) If any person shall transfer any property which he owns or shall cause any property, to which he is absolutely entitled to be transferred to, or vested in, himself and any other person jointly, so that the title therein, or in some part thereof, vest no survivorship in such other person, a transfer shall be deemed to occur and to be taxable under the provisions of this act upon the vesting of such title.

(e) Whenever a person shall exercise by will a power of appointment derived from any disposition of property, such appointment, when made, shall be deemed a transfer taxable under the provisions hereof.

§ 2. Prescribes the rates and exemptions shown in the foregoing table.

§ 3. Provides for the deduction from market value of estate of debts and incumbrances created by the deceased on good faith and for which no reimbursements can be obtained.

§ 4. Taxes bequests ostensibly in payment of a debt over and above the true value of the debt and bequests to executors in lieu of commissions in excess of reasonable value of their services.

§ 5. Provides for the apportionment of the tax between life tenant and

remaindermen by the state tax commissioners and remaindermen must pay at the same time and manner as though vested in possession.

§ 6. A transfer of personal property of a resident of the state which is not therein or within the jurisdiction thereof, at the time of his death, shall not be taxable, under the provisions of this act if such transfer or the property be legally subject in another state or country to a tax of a like character and amount to that hereby imposed, and if such tax be actually paid or guaranteed or secured, in accordance with the law in such other state or country, if legally subject in another state or country to a tax of like character, but of less amount than that hereby imposed and such tax be actually paid or guaranteed or secured, as aforesaid, the transfer of such property shall be taxable under this act to the extent of the difference between the tax thus actually paid, guaranteed or secured, and the amount for which such transfer would otherwise be liable hereunder, or within the jurisdiction thereof.

The provisions of this act shall apply to the transfer of the following property belonging to deceased persons, non-residents of this state which shall pass by will or inheritance under the law of any other state or country, and such property shall be subject to the tax imposed by this section, to-wit:

(a) The transfer of all real estate and tangible personal property, including money on deposit in this state;

(b) The transfer of all intangible personal property, including bonds, securities, shares of stock and choses in action, the evidence of ownership to which shall be actually within this state; and

(c) The transfer of the shares of capital stock of all corporations organized and existing under the laws of this state, the certificates of which shares of stock shall be within or without this state.

The transfer of any property mentioned in sub-divisions (a) and (b) and the transfer of the shares of stock mentioned in subdivision (c) of this section, after the decease of the person owning the same, shall not be legal until the inheritance or transfer tax has been paid into the state treasury and a certificate of release to that effect executed by the state tax commissioner. No corporation organized or existing under the laws of this state shall transfer any such shares of stock, unless notice of the time of such intended transfer is served upon the state tax commissioner at least fifteen days prior to such transfer or until the state tax commissioner shall consent in writing thereto. Any such corporation making the transfer of any such shares of stock before the inheritance tax is paid, or before obtaining the consent of the state tax commissioner thereto, shall be liable to the state of West Virginia for said tax, together with any interest that may accrue thereon, and in addition thereto a penalty of five hundred dollars; which liability for such tax and interest and penalty may be enforced by a proper action in the name of the state of West Virginia.

§ 7. Makes the tax a lien, forbids transfer of property without its payment, and if so transferred makes executors, administrators and beneficiaries personally liable and declares that no statute of limitation shall be a defense to recovery.

§ 8. Provides for suspending the whole or a proportionate part of the tax pending litigation or settlement of a doubtful claim.

§ 9. Makes the tax due on assessment and charges interest at 4 per cent from time when due.

§ 10. Provides for payment of the tax and sale of property in the same manner as debts.

§ 11. Whenever any foreign executor, administrator or trustee shall assign or transfer in this state any stock, bond or other security liable to any such tax, standing in the name of, or in trust for a decedent, he shall have the tax assessed on such transfer by the state tax commissioner, and shall pay the tax into the state treasury on the transfer thereof; otherwise any person having authority to make or permit such transfer, who shall make or permit it, shall be liable to pay the tax if he then had knowledge, or reasonable cause to believe, that the property was liable to tax.

§ 13. Provides for reports by clerk of county court regarding transfers subject to tax.

§ 13. Requires executors, administrators and trustees to file with their inventory a statement as to any of the property they believe to be subject to tax.

§ 14. The state tax commissioner shall as soon as may be, from the statements and reports made by the clerk and the personal representative or trustee or other person as aforesaid, from the inventory of the estate, if there be one, and from such other information as he may be able to procure, ascertain whether any transfer of any property be subject to a tax under the provisions of this chapter, and, if it be subject to tax, shall ascertain and assess the amount of the tax to which it is subject. If in his opinion the transfer of any of the property so transferred is taxable under the provisions of this act, he shall make his certificate to that effect, setting out:

(a) The amount of such property liable to such tax.

(b) The rate of tax thereon.

(c) The names of the beneficiaries thereof.

(d) Their degree of relationship to the decedent,

(e) The amount of tax; and it shall be the duty of the county clerk and personal representative of every such estate, and if there be no personal representative the beneficiaries thereof to show in their report to the state tax commissioner, the information upon which to base such assessment. The state tax commissioner shall make duplicate certificates of his assessment, one of which he shall forward to such personal representative, trustee, grantee, vendee or bargainee.

If the tax is not paid within thirty days after the assessment thereof, the state tax commissioner may forward the other certificate to the clerk of the county court of the county wherein the property or the greater part thereof in value is located, which certificate shall be recorded by the clerk in the trust deed book in his office. For recording such certificate of assessment the clerk shall charge a fee of fifty cents to be paid out of the estate.

§ 16. Provides for the appointment of appraisers and the proceedings before them, and the remaining sections 17 to 26 provide for reports, compounding of uncertain tax claims, fees, records and proceedings for the collection of delinquent taxes.

WISCONSIN

Taxes all property of non-residents within the state.

TABLE No. 1.—TABLE OF RATES AS FIXED BY CHAPTER 320, LAWS 1917, IN EFFECT JUNE 1

CLASS OR RELATIONSHIP	Amount of exemption	Above exemption to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child, or its issue.	Widow, \$10,000; others, \$2,000.	1%	2%	3%	4%	5%
Brother, sister, or their descendants, son-in-law, daughter-in-law.	\$500	2%	4%	6%	8%	10%
Aunt or uncle and their descendants.	\$250	3%	6%	9%	12%	15%
Brother or sister of grand parents and their descendants.	\$150	4%	8%	12%	16%	20%
All others except exempt charitable and public bequests.	\$100	5%	10%	15%	20%	25%

NOTE.—(a) The Statute (Chapter 320, L. 1917) provides: "No such tax, however, shall exceed 15 per cent. of the property transferred to any beneficiary. This abolishes the excessive rates shown in the last two columns and their only effect is on the trifling exemption.

(b) The charitable bequests exempted are shown in Table No. 2.

(c) This further reciprocal exemption is provided. No tax shall be imposed upon any tangible personal property of a resident decedent when such property is located without this state, and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and which tax has actually been paid, provided such property is not without this state temporarily nor for the sole purpose of deposit or safekeeping; and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state.

TABLE No. 2.—TABLE OF RATES AND EXEMPTIONS

In effect prior to June, 1917

CLASS OR RELATIONSHIP	Amount of exemption	Graded rates				
		Above exemption up to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child or its issue.	Widow, \$10,000; others, \$2,000.	1%	1½%	2%	2½%	3%
Brother, sister or their descendants, son-in-law, daughter-in-law.	\$500	1½%	2½%	3%	3½%	4½%
Aunt, or uncle and their descendants.	\$250	3%	4½%	6%	7½%	9%
Brother or sister of grandparents and their descendants.	\$150	4%	6%	8%	10%	12%
All others except charitable and public bequests.	\$100	5%	7½%	10%	12½%	15%
Municipal corporations for strictly town, county or municipal purposes, corporations organized under laws of the state, solely for religious, charitable or educational purposes, which shall use the property solely for those purposes.	All	No tax.				

THE STATUTE

Wisconsin has a much amended statute. The law is constituted by chapters 44 and 249, Laws of 1903, chapter 96, Laws of 1905, chapter 500, and section 36, chapter 660, Laws of 1907, and chapters 38 and 504, Laws of 1909, chapters 450 and 530, Laws of 1911, chapters 627, 643, 763 and 773, Laws of 1913. [As amended by chapters 253 and 498, Laws of 1915, and chapters 318, 319, 320, 321 and 322, Laws of 1917.]

The 1915 amendments: Chapter 253, Laws of 1915, took insurance money payable upon death from under the operation of the income tax, and made it subject to the inheritance tax as a part of the estate of the decedent. Chapter 498, Laws of 1915, provided for incorporation of trustees to whom a charitable, religious or educational bequest had been left within two years after death. This amendment is in substance repealed, and the law changed substantially to what it had been theretofore by chapter 321 of 1917.

The 1917 amendments: Chapter 321, as already shown, merely repeals an

amendment of 1915 as to charitable corporations. Chapter 320 prescribes the new rates as shown in the table. Chapter 318 merely prescribes that increases during administration shall not be included in the valuation of the estate. This was made necessary by the decision in *Matter of Kempsmith*, 161 Wis. 389. It makes no change in the law, but construes it in conformity with the general theory of inheritance taxation that the tax accrues at death.

Chapter 319 provides that the exemption of \$10,000 to the widow shall "include her statutory and other allowances." (To meet the case of *Smith v. State*, 161 Wis. 558.)

Chapter 322 follows the example of New York, California and the Federal government in taxing transfers at the death of one joint tenant or tenants.

Prior to June of the present year (1917) none of these amendments were effective.

THE ACT AS AMENDED

§ 1087. A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association or corporation, except county, town or municipal corporations within the state, for strictly county, town or municipal purposes, and corporations of this state organized under its laws solely for religious, charitable or educational purposes, which shall use the property so transferred exclusively for the purposes of their organization, within the state, in the following cases, except as hereinafter provided:

1. When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.

2. When a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a non-resident of the state at the time of his death.

3. When the transfer is of property made by a resident or by a non-resident when such non-resident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift, made within six years prior to the death of the grantor, vendor or donor, of a material part of his estate, or in the nature of a final disposition or distribution thereof, and without an adequate valuable consideration, shall be construed to have been made in contemplation of death within the meaning of this section.

4. Such tax shall be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof, by any such transfer whether made before or after the passage of this act; provided, that property or estates which have vested in such persons or corporations before this act shall take effect, shall not be subject to a tax; and provided, further, that contingent interests created by the will of any person who died prior to the passage of this act shall not be taxed.

5. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property, made either before or after the passage of sections 1087—1 to 1087—24, inclusive, such appointment, when made, shall be deemed a transfer taxable under the provisions of sections 1087—1 to 1087—24, inclusive, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of sections 1087—1 to 1087—24, inclusive, shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

6. Whenever any property, real or personal, is held in the joint names of two or more persons, or as tenants by the entirety, or is deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer of one-half or other proper fraction thereof taxable under the provisions of this chapter in the same manner as though the property to which such transfer relates belonged to the tenants by the entirety, joint tenants or joint depositors as tenants in common, and had been bequeathed or devised to the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, by such deceased tenant by the entirety, joint tenant or joint depositor, by will. [This subd. added by ch. 322, L. 1917.]

7. The tax so imposed shall be upon the clear market value of such property at the rates hereinafter prescribed and only upon the excess of the exemptions hereinafter granted.

§ 1087. (Subdivisions 2, 3 and 4 as amended.) Prescribe the rates and exemptions set forth in the foregoing tables (No. 1 and No. 2).

§ 1087 (5). Provides that the tax shall be a lien upon the property transferred, and holds executors and administrators personally liable until it is paid. It provides for receipts which must be produced on final accounting, and there can be no settlement of the account unless such a receipt is produced or a bond has been filed.

§ 1087 (6). Allows a discount of 5 per cent if the tax is paid within one year. After eighteen months 10 per cent interest is charged from the date of accrual, which may be reduced to six in case of unavoidable delay. When a bond is filed the interest is at the rate of 6 per cent from the date of accrual to the date of payment.

§ 1087 (7). Gives executors and administrators power of sale to pay the tax in the same way as to pay debts, requires them to deduct the tax if the property is in money; if not to collect it from the beneficiary, to whom no delivery may be made until the tax has been paid. If the legacy is charged on real estate the heir must deduct the tax which remains a lien until paid, and may be enforced in the same manner as the legacy or by the district-attorney. If the legacy is given for a limited period and is in money the tax shall be deducted from the whole amount, but if in property an application must be made to the court for an apportionment of the tax among the beneficiaries.

§ 1087 (8). Provides for proportionate refund where debts have been proved against the estate after distribution and refunds of erroneous or excess payments.

§ 1087 (9). Provides that remaindermen may elect within one year to defer payment until they come into possession by filing a bond in three times the amount of the tax, with a sworn inventory of the property, and renewing the bond every five years.

§ 1087 (10). Taxes bequests to executors in lieu of commissions in excess of reasonable compensation.

§ 1087 (11). 1. If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county or the state treasurer on the transfer thereof. 2. No safe deposit company, bank, or other institution, person or persons, holding securities or assets of a non-resident decedent, nor any foreign or domestic corporation doing business within this state in which a non-resident decedent held stock at his decease, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the tax commission and public administrator at least ten days prior to the said transfer; nor shall such safe deposit company, bank, or other institution, person or persons, nor any foreign or domestic corporation, deliver or transfer any securities or assets of the estate of a non-resident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of

such securities or assets under the provisions of the inheritance tax laws, without an order from the proper court authorizing such transfer; and it shall be lawful for the tax commission or public administrator, personally or by representative, to examine said securities or assets at any time before such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided, shall render said safe deposit company, trust company, bank, or other institution, person or persons, or such foreign or domestic corporation, liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of the inheritance tax laws. The tax commission may issue a certificate authorizing the transfer of any such stock, securities or assets whenever it appears to the satisfaction of the commission that no tax is due thereon.

3. Where stocks, bonds, mortgages, or other securities of corporations organized under the laws of this state or of foreign corporations owning property or doing business in this state shall have been transferred by a non-resident decedent, the tax shall be upon such proportion of the value thereof as the property of such corporation in this state bears to the total property of the corporation issuing such stocks, bonds, mortgages, or other securities. 4. If any stocks, bonds, mortgages, or other securities of a holding company or other corporation are based upon or represent in whole or in part the value of any stocks, bonds, mortgages, or other securities of a Wisconsin corporation or a corporation owning property in this state, either directly or indirectly, the transfer of the stocks, bonds, mortgages, or other securities of such holding company or other corporation shall be subject to the inheritance tax in the proportion which the Wisconsin property bears to the total property represented by or subject to the total stocks, bonds, mortgages, or other securities of which those so transferred are a part. 5. Whenever a tax is due from any resident or non-resident upon the transfer of any property or estate which is partly within and partly without this state, or upon any stocks, bonds, mortgages, or other securities representing any such property partly within and partly without this state, such person shall be entitled to deduct from the value of such property so transferred only a proportion of the debts, expenses of administration and exemptions, equal to the proportion which the Wisconsin property bears to the entire estate of the decedent. 6. The tax commission shall require such reports and information, and shall make such orders, rules, and regulations as it may deem necessary to enable the commission to secure the necessary information from corporations, domestic and foreign, and to ascertain the amount of and collect such tax; and no holding company or other corporation subject to the provisions of this section shall deliver or transfer any such stocks, bonds, mortgages, or other securities of a non-resident decedent based upon or representing in whole or in part, directly or indirectly, the value of Wisconsin property, or stocks, bonds, mortgages, or other securities of a Wisconsin corporation or a corporation owning property in this state, without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of such transfer, except upon order of the proper court or a certificate of the tax commission. 7. Any corporation or holding company violating the provisions of this section shall be liable to the state for the amount of the tax; and for willful violation of its provisions shall forfeit its charter or its license to do business within this state upon complaint of the tax commission, and conviction thereunder.

§ 1087 (12). Gives the court granting letters jurisdiction of all transfer tax matters, and makes regulations for the filing of ancillary letters requiring notice to the public administrator and a full inventory.

§ 1087 (13). Provides for the appointment of appraisers and hearings before them, and for the computation of life estates and remainders by the commissioner of insurance on mortality tables on the basis of 5 per cent. No allowance is made in valuing estates that may be defeated or abridged by a contingency, but a proportionate refund is provided if the contingency happens. In case of contingent remainders the tax is fixed at the lowest possible rate, the ultimate beneficiary being required to pay the difference if it turns out that he is liable to pay a higher rate. Where taxation has been postponed remainders are valued without any deduction for the intermediate life estate.

Where an estate for life or years can be divested by the act or omission of the legatee it is taxed as though there were no possibility of such divesting. The section makes the usual provisions for appeal and rehearing before the county court.

The rest of the statute is concerned with reports of public officers and proceedings for the collection of delinquent taxes.

WYOMING

Taxes property of non-residents within the state.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount of exemption	Rate of tax
Father, mother, husband, wife, child, brother, sister, son-in-law, daughter-in-law, adopted or mutually acknowledged child or lawful lineal descendant.	\$10,000 and any life estate where the remainder goes to collaterals or strangers	2% on all in excess of exemption.
All others.....	\$500	5% on all above exemption.

COMPILED STATUTES 1910, CHAPTER 169.

§ 2455. All property, real, personal and mixed, which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same, while a resident of this state, or if decedent was not a resident of this state at the time of his death, which property or any part thereof shall be within this state or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectation, to any property or income thereof, shall be and is subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the state, and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed.

The rest of the section prescribes the rates and exemptions as shown in the foregoing table.

§ 2456. When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother, sister, the widow of the son, husband of the daughter, or a lineal descendant during the life or for a term of years and remainder to the collateral heir of the descendant, or the stranger in blood or to the body politic or corporate at their decease, or on the expiration of such term the said life estate or estates for a term of years shall not be subject to any tax and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax prescribed by this chapter on the remainder shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon shall be and remain a lien on said property until the same is paid: Provided, That the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax elect not to pay the same until they shall come into the actual possession or enjoyment of such property, then, in that case said person or persons or body politic or corporate

shall give a bond to the people of the state of Wyoming, in a penalty three times the amount of the tax arising upon such estate with such sureties as the district judge may approve, conditioned for the payment of the said tax, and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of said property, which bond shall be filed in the office of the county clerk of the proper county; Provided, further, That such person shall make a full, verified return of said property to said district judge, and file the same in his office within one year from the death of the decedent, and within that period enter into such securities and renew the same each five years.

§ 2475. Makes taxes due at death, allows a discount of 5 per cent if paid within six months, after that interest charged from accrual at 6 per cent, and if not paid within one year executors or administrators must give a bond.

§ 2458. Requires executors and administrators to deduct the tax or collect it from the beneficiary, to whom delivery must not be made unless the tax is paid. Where the legacy is charged on real estate the tax must be deducted, is a lien and may be enforced in the same manner as the legacy. Where property is given for a limited period application to the court must be made to apportion the tax among the beneficiaries, unless the legacy is in money, when it must be deducted from the whole amount.

§ 2459. Gives power of sale to pay the tax in the same way as to pay debts.

§ 2460. Provides for receipts which must be produced on final accounting.

§ 2461. Requires administrators to go to the county treasurer with regard to the transfer of any real estate believed to be taxable.

§ 2462. Provides for a proportionate refund in case debts are proved against the estate after distribution.

§ 2463. Requires payment of the tax before any transfer of stock by a foreign executor or administrator, and makes the corporation making the transfer liable for the tax in case it is not so paid.

§ 2464. Provides for refund of taxes erroneously paid provided the application for refund is made within two years of such payment.

The rest of the statute provides the usual proceedings for appraisal, assessment, appeal and the collection of delinquent taxes.

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